IN THE OECD COMPLAINTS AGAINST AKER BP ASA AND AKER ASA

NOTES ON FINAL WRITTEN SUBMISSIONS

National Contact Point for Responsible Business Norway
P.O. Box 8114 Dep, NO-0032 Oslo, Norway
oecdncp@mfa.no

Dear members of the Norwegian National Contact Point for the OECD Guidelines,

The Complainants very much appreciate the *Response and submissions* filed by Aker BP ASA and Aker ASA on 22 January 2024, with which the two companies provide valuable information to assist the NCP in its examination of their compliance with the Guidelines. We also welcome the extensive expert opinion by Professor Marius Emberland in support of Aker's *Response*. The two documents invited for extensive scrutiny and required separate responses by both Prof. Anita Ramasastry and Dr. Tara Van Ho. Consequently, the finalization of these Notes took more time than foreseen, for which we ask your understanding.

We refer to the *Complaints* of 31 May 2022, our *Submission* of 24 November 2023, and the *Response and submissions* of Aker BP ASA and Aker ASA that was filed on 22 January 2024, and hereby submit the Complainants' *Notes on final written submissions* in respect of the issues to be examined by the NCP.

This document is organized as follows:

(A) Prologue

> *"We claim our right to effective remedies and reparation for the crimes that have been committed against us. We lived through the unspeakable horrors of Sudan's oil war. Our villages have been burned down, our daughters raped, children abducted, parents beaten to death, cattle stolen, communities uprooted and displaced. The human rights abuses of the oil war have devastated our lives. As victims of human rights abuses, we have the right to remedy and reparation. This right has been denied to us and we claim it now.*
>
> *Crimes have been committed by a variety of armed forces after the Government of Sudan decided to let international companies exploit oil on our land. The Lundin Consortium found our oil, sold it for a fortune, and left. Its managers are expected to stand trial in Sweden shortly for complicity in crimes committed against us. The Consortium members and their shareholders are indebted to us and it is time to pay.*
>
> *South Sudan is in turmoil and its authorities are unable to govern the country effectively and equitably. Consequently, a remedy and reparation process will have to be independently managed, without any political interference. Because we suffered together, we want collective reparation. Because we need a transparent and accountable process, we solicit impartial international parties to initiate and oversee a remedy process. We would appreciate if Sweden, Lundin Petroleum's home country, could take the lead to realize this."*
>
> Liech Victims Voices, Juba, May 2016[1]

1. This document aims to assist the NCP with its mandate to investigate this matter and prepare a final statement. We understand that statement will include, among other things, the results of an examination of the company's compliance with the Guidelines, including a rationale behind each conclusion. It may also include recommendations to the company on how to improve its conduct in accordance with the Guidelines. The due diligence that Aker[2] presented in their *Response and submissions* of 22 January 2024[3] was utterly inadequate and the NCP should make findings to that effect.

2. We see no reason why there would be no space for an amicable resolution between the Complainants and the two Aker companies based on the principles and purpose of the Guidelines, and we hope that the NCP will make recommendations in that direction.

3. We are grateful for the NCP's ongoing careful consideration of this important Specific Instance.

---

[1] Published on https://unpaiddebt.org/remedy-claim/ This message was endorsed during four consecutive meetings of representatives of the communities that have been affected by the oil war in Lundin's Block 5A. They formed the Liech Victims Voices. The LVV has branches in South Sudan, Uganda and Kenya and is represented by Rev. James Kuong Ninrew Dong and Rev. Matthew Mathiang Deang MP.

[2] In line with our November 2023 *Submission* to the NCP, we will refer to both Aker companies simultaneously as "Aker". When referring to them separately, we will write Aker BP or Aker ASA, as was done in the Complaints. Our understanding is that Aker ASA did not carry out its own due diligence on the merger, but relied on Aker BP.

[3] We will below refer to Aker's *Response and submissions* of 22 January 2024 as the *Response*.

(B) Introduction

> *"A large number of civilians suffered as a result of the Sudanese regime's crimes, which we argue the indicted were complicit in. Many of the civilians who survived were forced to flee their homes and never return, and still today have no idea what happened to their relatives and friends who they were separated from."*
>
> Prosecutor Henrik Attorps, Press release, "*Prosecution for complicity in grave war crimes in Sudan*", 11 November 2011.

4. Lundin[4] denies involvement in war crimes and the need to remedy alleged harms in Sudan. The Swedish prosecutor, after a deep investigation of unprecedented length, disagreed. When a criminal indictment was filed, the company faced further litigation costs and the potential for a large forfeiture liability was confirmed. Within days, a sale was rumoured. Aker BP was interested, and the two large multinationals negotiated a deal. But well before the transaction came into force, Aker was alerted – not least by this OECD complaint – that it posed a particular human rights risk. The victims, who for decades have sought remedy from Lundin, said the transaction that the two companies were arranging would obstruct remedy of their ongoing human rights violations.

5. These stakeholders made what was, in essence, a simple claim to Aker. Our homes were destroyed, our family members killed, we were driven from our land. We know that you are dealing with a company that we say owes us remedy for these and other abuses of our rights. You know or should know that company has not engaged with us, nor has it offered any remedy. We believe that you're going to engage in a transaction that will prevent that remedy and therefore worsen the ongoing violations of our human rights. We want you to stop your activities in this merger, to engage in specific due diligence about our concerns and to make sure that our ability to get remedy and our rights are not impeded by your deal. Otherwise, the breaches of our rights – ongoing to date – will not be remedied. Engage with us to understand. We propose safeguards that you can negotiate and require. If you do not stop, or restructure this deal, then through your activities – your specific choice to engage in this transaction the structure of which you have negotiated and now recommend – you will have, despite our warnings, contributed to these breaches of our human rights.

6. The companies had, however, already set their course. Forty days after the criminal charges were filed, Aker Capital and BP Exploration Operating Company Ltd, owners of 64.99% of the shares and votes in Aker BP irrevocably undertook to support the proposed combination of the company. Despite the severe risk shown by the complaint, Aker did not engage appropriately with the stakeholders (who had decades of prior knowledge) to understand their position or their calculations of the risk. Within months, the merger went ahead with none of the safeguards proposed by the victims.

7. The transaction has cut Lundin, now Orrön, from redwood to bonsai. By way of indication, its share price dropped from over USD 400 to under USD 10 overnight. Shortly before the merger, Lundin had the resources that arise from a market capitalisation of over MUSD 13.000. That cap today hovers around MUSD 190, less than the prosecutor's criminal forfeiture claim of MUSD 220 alone. Such a seismic shift in valuation was not just a numerical dip but has been a profound transformation of the company's financial and operational landscape.

[4] We refer to Lundin Energy as "Lundin" and to Orrön Energy as "Orrön". When referring to a specific legal entity that belongs to the company, we will use that entity's full legal name.

8. Before the merger, in the event of conviction, Lundin could readily pay the Swedish State should the criminal forfeiture be required. It could also afford the cost of reparations to the victims, on almost any estimation. Given its precipitous drop in financial standing post-merger, the capacity of Orrön to bear the burden of any substantial legal penalties or compensation was radically undermined. The financial buffer that once might have absorbed such shocks has been eroded, leaving the company in a vulnerable position where forfeiture at the level proposed presents a significant challenge. To illustrate again, on the day of the merger, Orrön's market cap barely amounted to the cost of criminal forfeiture and could not extensively compensate victims' civil or other reparations claims. Today, the market cap is less than the criminal forfeiture sought, and a fraction of estimated reparations. Orrön's shares have lost 71% of their value in 18 months.[5] Aker have never assessed or asserted that Orrön can pay for or raise capital adequate to meet the criminal forfeiture and the cost of reparations.

	Criminal forfeiture sought	Damages estimated[6]	Market Cap[7]
11 November 2021 (Charges brought)	0.127	1,787	11
31 May 2021 (Merger imminent)	0.127	1,787	13.88
30 June 2022 (Post Merger)	0.127	1,787	0.2
29 August 2023 (Forfeiture increased)	0.22[8]	13,293	0.25
25 February 2024 (To date)	0.22	13,293	0.19

Table 1: Market Cap as an indicator of ability to pay forfeiture and compensation claims (Billion USD)

9. It will be appreciated by the NCP that the victims and those considering extensive civil or OECD Guidelines compliant compensation claims against Orrön must now confront that the company may be unable to pay. Litigation has become less viable. Compensation funds are depleted. As feared, remedy slips away.

[5] Market Capitalization is a measure of value not an expression of available capital. Companies cannot usually mobilize amounts of cash that come even close to their market capitalization. There are also other factors that tending to show the risk that Orrön may not meet the liability and other costs arising from the Sudan operations. For example, the company sets aside no sums for liability risk in connection with Sudan, nor for compensation for the victims. And although Aker discuss the share performance of the company in positive terms, they neglect to point out that from a post-merger high in September 2022, investors in Orrön have seen the value of their share erode from around USD 24 to under USD 7 today. We note that despite this, Aker made no explicit reference to the dive in value and the apparent fall in investor confidence suggested by this prolonged decline.

[6] See footnote 73 for an explanation of the increase in estimation of the value of the damages.

[7] Market Cap estimates derived from https://companiesmarketcap.com/orron-energy/marketcap/#google_vignette

[8] MSEK 2.380 = MUSD 217.

(C) Preliminary remarks

> *"I have the right to compensation. And the whole community has the right."*
>
> Rev. James Kuong Ninrew Dong, interview with Skye Wheeler, Juba, August 23, 2008, quoted in *Unpaid Debt*, 2010, p. 50.

10. In section (E) we will give our observations on Aker's description of its human rights due diligence in its *Response* of 22 January 2024. But before doing so, we would like to set out before the NCP a few preliminary remarks in response to Aker.

11. The scope of the Specific Instance under consideration. The Initial Assessment determines that the specific instance to be considered by the NCP "*is delimited to questions concerning the companies' human rights due diligence in connection with the transaction*". Accordingly, we seek to apply the standards of human rights due diligence[9] to the transaction in this final stage of the process. Aker seek, however, to restrain the NCP's analysis in the final statement, in a way that would stop the NCP from drawing reasoned conclusions about 'contribution', which is the central issue of due diligence. We identify here why that approach would be wrong.

- It is axiomatic that any HRDD must aim to fulfil what the OECD calls the *"first and foremost*" purpose of HRDD, which is to "*avoid causing or contributing to adverse impacts on people… and society*".[10] Meeting that purpose under the OECD's HRDD process, is wholly dependent on an assessment of contribution. See, for example: step 2, requiring a specific assessment of contribution;[11] step 3, stopping activities identified as contributing to adverse impacts; [12] step 4, inter alia, tracking implementation and effectiveness of due diligence where the enterprise has or may have contributed to human rights impacts, including by seeking to consult rightsholders;[13] step 5, communicating with impacted or potentially impacted stakeholders in respect of human rights that the enterprise contributes to;[14] step 6, remediation of actual impacts contributed to by the enterprise.[15] The OECD also emphasises stakeholder engagement in HRDD around contribution. Such stakeholder engagement arises when identifying potential adverse impacts of a business, in devising mitigation strategies to prevent and mitigate those impacts those impacts, and in identifying forms of remedy where an enterprise has contributed to an adverse impact.[16]

- Thus it is beyond any doubt that the issue of contribution is intrinsic to the HRDD process and is embedded throughout.

---

[9] We will use HRDD as an abbreviation of "human rights due diligence".
[10] *OECD Due Diligence Guidance for Responsible Business Conduct.*
[11] An inherent part of step 2 of the cycle of 6 steps that together constitute HRDD as defined by the OECD, is to "*assess the enterprise's involvement with the actual or potential adverse impacts identified in order to determine the appropriate responses (...). Specifically, assess whether the enterprise: caused (or would cause) the adverse impact; or contributed (or would contribute) to the adverse impact; or whether the adverse impact is (or would be) directly linked to its operations, products or services by a business relationship.*" (*OECD Due Diligence Guidance for Responsible Business Conduct* at 2.3).
[12] *OECD Due Diligence Guidance for Responsible Business Conduct* at 3.1.
[13] *OECD Due Diligence Guidance for Responsible Business Conduct* at 4.1.
[14] *OECD Due Diligence Guidance for Responsible Business Conduct* at 5.1.
[15] *OECD Due Diligence Guidance for Responsible Business Conduct* at 6.1.
[16] *OECD Due Diligence Guidance for Responsible Business Conduct* at p.48 – 50.

- The outcome of Aker's failures of due diligence was an unfounded assessment that they did not risk contributing to an adverse impact on human rights.[17] There was – as we show in this paper – at the least an obvious risk of that contribution. Aker was at risk of contributing to that adverse human rights impact through its own activities by actioning the merger, and it was expected to cease or change the activity that is responsible, in order to prevent or mitigate the chance of the impact occurring or recurring. And as the impact nevertheless appears to have taken place, Aker should engage actively in its remediation either directly or in cooperation with others (be it the courts, the Government, other enterprises involved or other third parties).[18]

- Thus, failure to address contribution would render a HRDD process meaningless. It would not be at all consistent with the purpose and process of HRDD identified above. Aker were asked by the complaints filed on 31 May 2022 to conduct HRDD into a specified risk of actions that – if taken – would lead to contribution. But Aker then took those actions. The assessment of their purported HRDD must therefore look at contribution.

- Despite this, Aker now protest that our analysis of this central issue of contribution has – impermissibly in their view – added a "second issue". Their submissions have the effect of asking the NCP to disregard the issue of contribution. But our request is for the NCP to assess the company's due diligence connected to the merger in accordance with the expectations of due diligence arising from the OECD Guidelines. We are, consistent with the initial assessment and this process, therefore seeking for the NCP to examine the "*companies' human rights due diligence in connection with the transaction*". As an integral part of the human rights due diligence cycle, the NCP should therefore also assess the level of involvement of Aker to the adverse impacts in connection to the merger and the adequacy of its response to the actual and potential impacts that – we submit – Aker should have found. We assert that this response was inadequate – in fact, by signing the merger agreement without taking the mitigating actions it should have according to the OECD Guidelines, Aker's actions facilitated and incentivized Lundin to perpetuate an ongoing adverse impact (we refer to paragraphs 25-28 of our *Submission*. We assert that such a finding would be an integral part of any assessment of Aker's human rights due diligence.

- We ask the NCP to take into account that the factual circumstances have changed since the Complaints were filed; the merger came into effect on 30 June 2022 and the adverse impact that we warned Aker BP about in the Complaints now seems to have occurred. It is in the interest of the rightsholders affected by this adverse impact and in the interest of the promotion of the effectiveness of the Guidelines that the NCP also assesses the way Aker BP, through its own actions, is involved with this impact as to determine its current responsibilities vis-a-vis these rightsholders.

12. Human rights due diligence in the context of mergers and acquisitions: HRDD in the context of mergers and acquisitions should not narrowly focus on the targeted assets, but also on the human rights policies and practices of the negotiating partner (the parent company), on the transaction, and on the impact of the transaction on human rights. This is confirmed by

[17] Aker, *Response*, p.5.
[18] See, UNGP 13.

Professor Ramasastry in her *Response to Response and Submissions*, paragraphs 6-18 and 27-29. Although Aker expend much energy in their *Response* to seek to focus their due diligence towards the targeted companies (i.e. to be purchased), Aker BP seems to have concluded itself that the scope should be wider. This is evident in its own policies, put in place since the events of this complaint. Aker BP explains that its *new* integrity procedure for M&A transactions includes "*a high-level assessment of the target of the transaction and the transaction itself to assess relevant RBC issues*" and will "*consider and evaluate identified RBC issues related to the target of the transaction and the transaction itself in the investment decision*" (emphasis added).[19] The requirement that the effect of the transaction was a matter for HRDD is beyond debate, not least because "*a business enterprise's human rights risks are any risks that its operations may lead to one or more adverse human rights impacts.*"[20] Aker's decision to merge/acquire Lundin was an operation (in which they almost doubled their size) that may have led to the adverse human rights risks warned of. They needed to assess such risks.

Professor Ramasastry notes: *"Aker should, as part of its negotiations with Lundin Energy AB ("Lundin"), have assured that the merger, and the proposed structure would not be used by Lundin to avoid its responsibility to rights holders, and to provide remedy. Thus, the NCP in addressing the nature of human rights due diligence should not look solely at human rights due diligence as it relates to Lundin Energy Merger AB. The human rights policies and practices of the parent company Lundin, as the architect of the transaction is also relevant. Aker, through its negotiations with Lundin as the parent company had a business relationship at the time of the negotiations. Part of its human rights due diligence should have been to determine how structuring the transaction with the creation of a Merger co, would be impacting on the issue of access to remedy for claimants victims of war crimes and human rights abuses in Sudan."*[21]

13. Stakeholder engagement: According to the OECD Guidelines, meaningful stakeholder engagement is a key component of the due diligence process. As stated in the OECD Due Diligence Guidance, "in particular, when the enterprise may cause or contribute to, or has caused or contributed to an adverse impact, engagement with impacted or potentially impacted stakeholders and rightsholders will be important."[22] The Guidance further outlines that meaningful stakeholder engagement should be an integral part of all steps of the HRDD process:

- when identifying actual or potential adverse impacts in the context of its own activities and engaging in assessment of business relationships with respect to real or potential adverse impacts (step 2);
- when devising prevention and mitigation responses to risks of adverse impacts caused or contributed to by the enterprise (step 3);
- when tracking and communicating on how actual or potential identified human rights impacts in the context of its own activities are being addressed (step 4 and 5) and;

[19] Summarized on page 35 of Aker's *Response*.
[20] *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, HR/Pub/12/02, Key Concepts at p.6.
[21] Professor Anita Ramasastry, *Response to Response and Submissions*, 22 March 2024, p. 22.
[22] *OECD Due Diligence Guidance for Responsible Business Conduct*, p.18-19.

- when identifying forms of remedy for adverse impacts caused or contributed to by the enterprise and when designing processes to enable remediation (step 6).[23]

Especially considering the severity of the risks and the clear warning signals sent out by the stakeholders and affected rightsholders, Aker's HRDD in connection to the merger could and should have been duly informed by stakeholder engagement. In our analysis below we show how none of the relevant issues Aker purports it assessed as part of its due diligence, was informed by meaningful engagement of affected stakeholders.

14. Confidentiality: In light of the above point on stakeholder engagement, we make a preliminary point regarding Aker's position on **confidentiality obligations.** They claim first that "customary" non-disclosure agreements precluded any kind of interaction about the process during the process of negotiating and conducting due diligence, for commercial reasons. That first reason was – we submit – no basis whatsoever for Aker to have failed to engage with stakeholders on elementary issues, including the basis for the valuation of potential remedy claims. Any number of methods of enquiry could have provided them with access to stakeholders and information. For example, at any point they could have commissioned a third-party intermediary who was entirely ignorant of the deal to have engaged and investigated the severe risks apparently presented. In any event – especially given the severe human rights risk and the fact that their business relationship was Lundin who carried the liability risk of war crimes – it is improper to suggest that customary non-disclosure contracts could not have been varied to permit adequate investigation of the human rights risks identified by stakeholders. Aker is a sophisticated party capable of negotiating a sophisticated contract to enable full human rights due diligence. The fact that they did not do so was elective and not mandatory. It led to a failure to understand the situation – because, as explained below, they did not engage with those most knowledgeable about the substance of the remedy claim and the situation of the victims in Sudan. Second, Aker claim that the potential transaction was inside information. But they provide no explanation for why insider information regulations would preclude stakeholder engagement on the specifics of the facts raised by the public Complaint and about the public indictment. The NCP will recall that Aker and Lundin published that they had agreed to merge on 21 December 2021 and that the merger did not go through until 30 June 2022. The deal was known. The human rights risks were as published in this Complaint. Aker's reliance on insider trading laws gives no proper reason why stakeholder engagement could not have been extensively conducted before the harmful deal was concluded.

15. Human rights and the essential unity of the corporation: The expectation that companies should address their human rights impacts does not cease, just because companies are sold, bought or restructured. To contend that the Guidelines allow companies to restructure in ways that avoid the implementation of remedy anticipated by the Guidelines, is to defeat their purpose. Aker's assertion that none of the companies involved in the merger were linked to Lundin's operations in Sudan raises critical questions about the relation between legal separation within a company and ownership of human rights responsibilities. Complainants believe that the internal distribution and restructuring of legal liabilities within Lundin or Aker BP is not the dispositive of the application of the Guidelines to the Complaints. We come to this conclusion based on several interconnected, mutually reinforcing and overlapping lines of thought:

- Corporate legal separation arose for purposes that are inapposite to the context of multinational enterprises whose constituent entities may cause or contribute to

[23] *OECD Due Diligence Guidance for Responsible Business Conduct*, Q10 '*When is stakeholder engagement important in the context of due diligence?*', p.50.

human rights violations abroad. Parent company limited liability was meant to protect investors in a subsidiary who were all individuals so that they would not be financially responsible for their company's liabilities above the amount of their investments.[24] Such investor liability would be a disincentive to invest, and consequently detrimental to the economy. The target of corporate limited liability, the contract creditor, should be aware of the corporate structure from the onset of the relevant transaction. However, the plight of the human rights victim is different. A tort victim is an involuntary participant in the tort, with no prior opportunity to withdraw from the interaction.[25] In the context of the Guidelines and the Complaints, this distinction argues in favour of disregarding the legal fragmentation of companies when it stands in the way of achieving the purposes of the Guidelines, and instead regard a corporation and its subsidiaries as a unified entity.

- Authoritative courts have acknowledged the essential unity of the entities that make up multinational enterprises in the context of tort and crime. *"There can be little doubt that the operations of a corporate enterprise organized into divisions must be judged as the conduct of a single actor. The existence of an unincorporated division reflects no more than a firm's decision to adopt an organizational division of labor. A division within a corporate structure pursues the common interests of the whole rather than interests separate from those of the corporation itself; a business enterprise establishes divisions to further its own interests in the most efficient manner."*[26] Accordingly, the Swedish Prosecution Authority considers Lundin Energy AB to be fully liable for the actions of its subsidiary Lundin Sudan Ltd.

- Strict separation is a recognized obstacle to effective corporate respect for human rights, especially the right to remedy. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises stresses the importance of a reform of corporate laws that *"should, among other things, consider how to ensure that the principles of separate legal personality and limited liability do not pose undue barriers to gaining access to effective remedies."* Arguably, the restructuring of Lundin posed such undue barrier. The Working Group further states that *"Businesses too should consider access to effective remedy as a lens to discharge their responsibilities under pillar II."*[27] The Guidelines are addressed to all the entities within the multinational enterprise and do not support that RBC responsibilities are as rigorously separated and restructured as is usance in corporate law.

- Access to remedy is an essential constituent of human rights protection. A key objective of the OECD Guidelines is to ensure the right to remedy for victims of human rights abuses. Complainants contend that the restructuring of Lundin before the merger with Aker BP created a legal barrier between Aker BP and the war crimes case and thereby between the victims and their right to redress. This barrier was artificial and should therefore be disregarded. Complainants contend that when Aker BP absorbed 98% of Lundin's assets, Aker BP also absorbed its human rights legacy, regardless of the fact that its criminal liability had been generously removed.

---

[24] See, Kurt A. Strasser, *Piercing the Corporate Veil in Corporate Groups*, 37 Conn. L. Rev. 637, 637, 2005.
[25] See, Henry Hansmann & Reinier Kraakman, *Toward Unlimited Shareholder Liability for Corporate Torts*, 100 Yale L.J. 1879, 1920 (1991); David W. Leebron, *Limited Liability, Tort Victims, and Creditors.* Columbia Law Review, Vol.91, No.7, November 1991, pp. 1565-1650.
[26] U.S. Supreme Court, *Copperweld Corp. v. Indepedence Tube Corp.*, 467 U.S. 752, 770, 1984.
[27] UN General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/72/162, 18 July 2017, p. 17.

16. Actions to be taken by Aker to remediate the consequences of inadequate HRDD in connection to the merger: According to Aker, in our *Submission* we suggest "*an obligation for Aker BP to remedy a lack of remedy from Lundin Energy*". Aker exaggerates our position here. The original Complaints were filed before the merger came into effect on 30 June 2022, so at a time when Aker had a business relationship with Lundin and could and should have taken measures to address the adverse impacts it could and should have identified (namely: the perpetuation of the denial of remedy). In the Complaints we recommended: "(4*) For Aker BP to take all necessary measures to ensure that the merger agreement with Lundin Energy will be amended in order to achieve that Lundin Energy retains sufficient financial means to provide effective remedy to victims of the human rights violations that the company stands credibly accused of having contributed to; (5) If the amendment of the merger agreement above proves to be unfeasible, for Aker BP to take all necessary measures to ensure that victims of adverse impacts in South Sudan access their right to effective remedy and reparation, including if this means that Aker BP itself will contribute to the provision of effective remedy.*" Recommendation (4) was not followed up on and in our *Submission* we argue that, by failing to take any preventive measures and by facilitating and incentivizing Lundin to perpetuate an ongoing adverse impact, Aker ASA and Aker BP contributed to this impact. Aker is expected to remediate this contribution and in our view it must do so by following up on recommendation (5) and "*take all necessary measures to ensure that victims of adverse impacts in South Sudan access their right to effective remedy and reparation*".

17. The role of Aker ASA: Complainants contend that Aker ASA has an individual responsibility under the Guidelines to identify and address adverse human rights impacts and has failed to comply with the Guidelines on its own merits. The Initial Assessment determined the scope of the Specific Instance as covering both companies' human rights due diligence in connection to the merger. Nowhere in their *Response* do the Aker companies describe any form of human rights due diligence by Aker ASA in relation to the (potential) impacts of the merger. The analysis in our *Submission* (par.41-43) of the role and responsibility of Aker ASA therefore remains standing. We also refer to the preliminary remark above on the issue of contribution and we assert that this assessment goes for both companies.

(D) Response to Professor Emberland's expert opinion

> *"I know I have the right for compensation but there is no way."*
>
> Mary Chabak, interview with Skye Wheeler, Juba, August 23, 2008, quoted in *Unpaid Debt*, 2010, p. 22.

18. The Complainants invited Dr. Van Ho to consider and respond to Prof. Emberland's report in the context of Aker's reply. Her analysis, which the Complainants endorse, is attached. The NCP is invited to consider it and her previous analysis in full. Complainants consider that Dr. Van Ho has appropriately grounded her analysis in the application of the human rights standards and the approach of the Guidelines.

19. The Complainants submit that Dr. Van Ho's response to Prof. Emberland is a robust (and even straightforward) analysis that again supports our position that the Guidelines have not been complied with in this claim.

20. We consider that the following position applies:

- This is a claim under the Guidelines. Responsibility under the Guidelines is a matter of businesses' functional relationships. Businesses can contribute to the denial of human rights and incur a responsibility to remediate harms.

- It is agreed that the right to remedy is a right that is anchored in the breach of underlying rights.

- Once the 'anchored' right to remedy exists, it can be breached of its own accord.

- Businesses should account for that right in their due diligence and can be responsible for actions that cause or contribute to denying victims an opportunity to seek redress.

- The right to remedy in these claims is anchored, for example, in breach of the right to life (among other rights).

- The appropriate form of remedy in this case includes financial compensation, not least because other forms of reparation would be inappropriate or inadequate on their own.

- The Guidelines require businesses to address adverse impacts with which they are involved, even where a State is unwilling or unable to meet its own obligations.

- States and business have different roles and expectations in how they should address their impacts on human rights. One difference is that businesses may sell assets and remove funds in a way that prevents access of victims to those funds.

- In this case, the substantive reparation needed is financial. The absence of adequate finances in the surviving legal entity will effectively deny the victims access to a real, adequate and effective remedy. That is a matter for Aker to address through due diligence. Their actions disrupted the right of victims to secure remedy when other rights have been breached.

21. Complainants contend that the NCP might cut through Professor Emberland's academic analysis by focusing on the intended effect of the Guidelines as a practical working instrument to assist companies and communities to enable appropriate remedy in cases where there has been a breach of human rights. The Guidelines (and UNGPs) do not simply replicate the redress expectations that apply to States. As Dr. Van Ho has explained, it is the functional nature of the relationships between businesses that are the focus of the Guidelines approach to ensuring that businesses respect human rights.

22. Here, it is credibly asserted that Lundin had impacted rights, such as the right to life. The Guidelines direct that such breaches be addressed. It is incontestable that a business can affect (and even extinguish) their own ability to address their human rights impacts, including by removing their ability to pay for remedy. If they did so, it would thwart the intended remedy regime of the Guidelines. Into that situation entered Aker. The Guidelines directed that Aker should conduct HRDD, the intended effect of which was that the company could identify its human rights impacts, including through its operations and via its business relationships. They were warned of the risks the deal posed to remedy. Diminishing the ability of another company to address impacts that fall within the remedy regime of the Guidelines (and UNGPs), quite obviously cuts across the practical intention of the Guidelines remedy regime. It would be rather sterile to suggest otherwise. We respectfully submit that this is an appropriate frame of analysis, which is not contingent on detailed academic application around the international law redress obligations of States.

23. The NCP can be reassured that the right to remedy is wholly capable of being impacted by businesses for the purpose of the Guidelines. There is nothing complicated or unusual in the expectation that Aker address that right in due diligence. Indeed, no internationally recognised right is out of bounds, because *all* internationally recognised human rights can be impacted by business. Foundational and authoritative guidance on the meaning and intent of the UNGPs (from which the OECD Guidelines draw their human rights chapter) makes this point abundantly clear:

> *"Q 5. How can all internationally recognized human rights be relevant to business?*
>
> *The corporate responsibility to respect human rights applies to all internationally recognized human rights, because business enterprises can have an impact — directly or indirectly—on virtually the entire spectrum of these rights. Even rights such as the right to a fair trial, which is clearly directed at States, can be adversely affected […]* [T]*here is nothing in principle that precludes any enterprise from causing or contributing to adverse impact on any internationally recognized human right*."[28]

24. As to the application of international law, we note that the Guidelines provide "*principles and standards of good practice consistent with applicable laws and internationally recognised standards"* that – explicitly and intentionally – "*extend beyond the law*."[29] As Prof. John Ruggie put it, " … *businesses should look to a core set of international legal instruments as an authoritative enumeration, not of binding international human rights laws that might apply directly to them, but of human rights they could adversely impact"* [emphasis by the author].[30] Prof. John Ruggie continues, *"(…) For affected individuals and communities, the UNGPs stipulate ways to further their right to remedy through access to judicial and non-judicial means, which both states and companies have roles in ensuring. This framing avoided the long-standing doctrinal debate over whether business enterprises can be duty bearers under international human rights law."*[31] It would defeat the essence of the Guidelines to invoke debates about the role of business under international law that the UNGPs and the Guidelines have handsomely and effectively outmaneuvered.

25. Imagine that Company A bulldozes a village without warning and without legal basis, just to build a tourist hotel. Any analysis of the Guidelines would identify that the destruction of the villagers' homes impacted their human rights and that the adverse impact was caused by Company A's operations. Company A should have done due diligence into the potential impacts of its operation. It has a responsibility to remedy the adverse impacts it had imposed on the villagers. This is irrespective of the precise expectations that the implicated rights imposed on the State where the harm took place. The point is that Company A could and did *impact* those rights.

26. Prof. Emberland connects the claimants' right to remediation to the willingness or ability of a domestic state to realize their own human rights obligations. However, the Guidelines were adopted, in part, as a response to states being unwilling or unable to realize their human rights obligations. To argue businesses are not required to address their adverse impacts under the Guidelines without a decision by state authorities is to put an end to that raison d'être of the Guidelines. If the right to an effective remedy as a human right would exclusively concern the relationship between rightsholders and a State, it would have no place in the Guidelines for Multinational Enterprises.

---

[28] *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, HR/Pub/12/02 at Q.5.
[29] *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, p.12.
[30] John Gerard Ruggie, *The Paradox of Corporate Globalization: Disembedding and Reembedding Governing Norms*, Harvard Kennedy School, August 2020, p. 23.
[31] Idem.

27. The Guidelines are meant to have practical meaning. If there is a right to remedy, it is not sufficient if it allows rightsholders to scream into the wind of justice. There must be a real pathway to actual remedy. Contributing to disabling a company's ability to provide remedy is disabling the right to remedy. It is impeding the intended remedy regime of the Guidelines (and UNGPs). As in this case, there is no basis to assume that the harm can be redressed without financial compensation, the stripping of Lundin without taking measures to secure their ability to provide remedy was a breach of the Guidelines.

28. In this context it is relevant to note that the Swedish Prosecution Authority has stated that, in the Lundin case, the Court's decision to separate the civil claims of the plaintiffs from the criminal proceedings means in practice that they are deprived of the right to review their damages, which is particularly offensive in a case involving massive war crimes. By asserting this regrettable state of affairs, the Prosecutor confirms his expectation that none of the 32 plaintiffs will find redress through the prosecution brought in the Swedish court system, and even less so the other est. 160.000 victims.[32]

(E) Human Rights Due Diligence?

> *"We are trying to claim for compensation but no one is responding."*
>
> Rebecca Nyandair Chatiam Deng, interview with Skye Wheeler, Juba, August 30, 2008, quoted in *Unpaid Debt*, 2010, p. 66.

29. Why, given the human rights warnings, especially those contained in our complaints, did Aker persist with a deal that left the new corporate minnow, Lundin/Orrön, with not only the defence and potential liabilities of the most serious of corporate war crimes trials, but also the extensive burden of remedy towards the victims that the OECD Guidelines articulate?

30. In its *Response*, Aker asserts that the necessary due diligence involved:

- The identification of risk, in respect of which they noted: (a) that potential liability and responsibility relating to the former operations in Sudan would remain with Lundin; (b) that Lundin refuted allegations of contribution to human rights violations, intended to defend themselves in court, and considered there were no grounds for them to compensate victims; (c) that the allegations and indictment identified a risk related to human rights that needed to be considered in connection with the transaction; (d) that it was not necessary or possible to conduct an independent examination of the facts upon which the indictment is based as the allegations themselves constituted a "red flag" and needed to be addressed as part of the human rights due diligence.

- Aker's primary focus then turned to the companies acquired by Aker BP, which they found they had no connection to or responsibility for the human rights impact in Sudan, being satisfied that the potential liability and obligation to compensate the victims would remain with Lundin/Orrön.[33]

[32] Stockholm District Court, Chamber 4, *Minutes*, 2023-11-22, Proceedings Annex 1645, Case number B 11304-14, Document ID 2790871, p. 11.
[33] Aker, *Response*, p.25.

- Aker's secondary focus was to consider and then find that Lundin/Orrön can meet potential future financial obligations stemming from its Sudan operations.[34]

31. The *Response* shows that Aker agrees that they should have assessed Orrön's ability to provide remedy. Nevertheless, we set out below that Aker materially failed to do so as they:

    a. materially bypassed clear red flags in their due diligence;

    b. weighted Lundin's defence but not properly assess the full circumstances, which included that the criminal indictment filed after long investigation suggest a high risk that Lundin had indeed contributed to adverse impacts;

    c. did not properly assess the financial capacity of Orrön;

    d. did not properly assess the costs of remediation; and

    e. did not conduct stakeholder engagement that may have corrected these flaws.

32. Taken together, Aker knew that Lundin carried an enormous human rights burden and that there could be enormous human rights risks connected to the merger. But they chose an indefensibly selective approach to due diligence to fool themselves that the merger did not connect them to those risks, and they did not take any preventive or mitigating measures. Complainants contend that by doing so, Aker defied the expectations and the purpose of the Guidelines. The flaws in Aker's due diligence on the merger are so colossal and essential that it cannot be considered HRDD under the Guidelines.

Aker did not prioritise their main focus towards the severe risk they were warned about

33. First, we emphasize to the NCP that Aker's primary focus on the companies acquired was not directed towards the most pressing human rights issues connected to the merger and raised in the Complaints. Aker identifies – vaguely – that they saw a red flag issue. But Aker does not detail what this red flag was a warning for.[35] Aker states that the "*focus*" of their human rights due diligence was "*on the target of the transaction and its connection, if any, to the human rights impacts in question*". Thus, it focused on the legal entities that it would absorb, comprising almost all of Lundin's assets. That approach was not responsive to the thrust of the Complaints filed, which showed a clear red-flag issue that Aker's activities with Lundin would impact the victims in Sudan as the transaction would radically diminish Lundin/Orrön's ability to carry the liabilities from the Sudan operations and would therefore perpetuate and worsen the existing and ongoing lack of remedy.[36]

34. In this context, Prof. Ramasastry points out that "*Much of Aker's response focuses on the fact that the Lundin Energy Norway had no connection to the issues of war crimes and human rights abuses in Sudan. As noted above, this is not the only relevant inquiry. There should have been a focus on the Lundin*

[34] Aker, *Response*, p. 27

[35] Aker states that "*regardless of Lundin Energy's position, the nature of the allegations and the fact that an indictment had been issued identified a risk related to human rights impact that needed to be considered in connection with the transaction*" (at p. 26). The nature of the identified risk in that passage remains obscure. Aker further identifies that "*the allegations themselves and the indictment was a "red flag" and needed to be addressed as part of the human rights due diligence*".

[36] See table above.

management's own human rights processes and commitments, as well as to the structure of the transaction and its impact on human rights."[37]

35. Aker's primary focus on the companies it would acquire concentrated on an artificial situation produced by the deal between it and Lundin.

- There is no doubt that Lundin carried the liabilities and responsibilities of the Sudan operations. Indeed, Aker confirms that Lundin, despite previous sales, had "*retained all liabilities and responsibilities related to the Sudan operations.*"[38] And Aker of course knew about the criminal charges against the Chairman of the Board and Director of Lundin Energy AB and that the prosecutor sought a corporate fine and forfeiture.[39]

- Aker and Lundin were in a business relationship. The business activities of both Aker and Lundin resulted in the negotiation and completion of the merger deal.[40]

- In negotiating the deal, the parties knew that Lundin Energy AB carried the liabilities and responsibilities related to the Sudan operations. Aker did not want to acquire those liabilities. Consistent with this, the deal was based on liabilities remaining with Lundin/Orrön Energy AB (even though 98% of Lundin was absorbed by Aker BP in the deal). Aker even obtained a further assurance that Aker BP would not assume any risks or responsibilities that were to be legally owned by Orrön Energy AB, by requiring Lundin Energy AB to provide the indemnity around the criminal indictment.[41]

- Thus, it was self-fulfilling that Aker would not buy liabilities that it sought to avoid, when the deal was based on the liabilities remaining with Lundin/Orrön Energy AB. It was artificial in that situation for Aker to focus human rights due diligence on the companies that it was buying. This was knowingly digging a dry well because they knew that the liability risk existed and that the liability was allocated to Lundin/Orrön Energy AB.

- Aker claims that it "*assessed any possibility of there being a connection*", but that they "*found no connection*". This is a highly artificial argument: the merger was negotiated and structured in such a way that Aker would – from a purely legal point of view – escape a connection. It was by operation of the structure of the merger that the companies that were to be absorbed by Aker BP were legally separated from the entity that formally owned the Sudan legal liabilities. Aker was not coerced to endorse this restructuring and could and should not have agreed to it. Aker should have identified and assessed the risks of adverse impacts in connection with the merger agreement and Lundin's restructuring that were the outcome of its negotiations with Lundin and the Lundin family.

- (We also note, in any event, that even on its own limited scope, Aker's primary due diligence carried inaccuracies by incorrectly identifying there was "*no connection*" and

[37] Prof. Ramasastry, *Response to Response and Submissions*, 22 March 2024, p. 5.
[38] Aker, *Response*, p.10
[39] Aker, *Response*, p.6.
[40] Aker, *Response*, p.8.
[41] Press Release, "*Aker BP and Lundin Energy combine their oil and gas businesses*" (December 21, 2021).

"no allegation had ever been made that Lundin Energy Norway AS carried any liability or responsibility to compensate victims".[42])

36. Instead, Aker should have more closely addressed the risks to remedy that they were told would be the adverse impacts arising from its dealmaking. This was not just common-sense – as civil society experts and the victims were clearly demanding that Aker prioritise this risk – but prioritisation of those risks was required by the due diligence expectations of the Guidelines.[43] Applying the OECD Guidance for the assessment of severity, the severity of the impacts warned of was very high:

- the **scale** was grave, as thwarting remedy for tens of thousands of war crimes victims would be a grave adverse impact;
- the **scope** impacted tens of thousands of vulnerable victims;
- the risk was that the proposed merger would permanently limit the ability of Lundin to provide reparations to the victims and so the damage would be **irremediable in character**.
- If the deal went ahead – which it did – the reduction in Lundin's ability to pay was baked into the deal, so the **likelihood** of the impacts warned of was reliant on Aker's actions. They could choose whether the risky deal would go ahead without further safeguards suggested by the stakeholders placing the complaint.[44]

---

[42] If we only look at the acquired assets (Lundin Energy Norway AS), as Aker does, a connection with human rights impacts cannot be denied. Aker asserts that Lundin Energy Norway had no connection to Sudan because the company *"did not exist at the time Lundin Energy operated in Sudan but was incorporated at a later stage. The acquisition [of its Norwegian assets] from DNO took place after the operations in Sudan had ended."* (p. 27). To back up the assertion, Aker writes that Complainants assert *"that Lundin Petroleum's acquisition of the Norwegian assets from DNO was fully financed through the profits from the sale of its Sudan operations"* (p. 27). This is a misrepresentation of the Complaints, that read *"Lundin Energy's Norwegian assets are directly linked to the company's alleged criminal activities. According to Lundin Energy's third quarter financial report from 2003, the profit derived from the sales of its Sudan operations enabled the purchase of assets on the Norwegian Continental shelf."* The direct link between Lundin Energy Norway ASA and Sudan are confirmed by Aker's statement that *"Lundin Energy Norway AS was incorporated in 2003. It was established in connection with (then) Lundin Petroleum's acquisition of petroleum licenses from Det Norske Oljeselskap AS ("DNO")."* (p. 26) and that Lundin Energy's *"Norwegian E&P business had been owned by DNO during the time that Lundin Energy operated in Sudan."* (p. 27). The direct link between the DNO acquisition and Sudan is made clear by Asley Heppenstal, then CEO of Lundin Petroleum AB and presently board member of Aker BP ASA, in the company's Q3 report *"The sale of Sudan 5A has resulted in a strong balance sheet for Lundin Petroleum with positive cash balances and no long-term debt. As a result we will be able to fund the purchase of the DNO assets and the development capital expenditures associated with these assets from internal cash and third party borrowings. We will still have remaining borrowing capacity following the acquisition to fund further acquisitions should opportunities arise."* Complainants contend that the connection between the sale of Block 5A and the DNO purchase connected Lundin Energy Norway with Lundin's operations in Block 5A. Aker also asserts that *"no allegation had ever been made that Lundin Energy Norway AS carried any liability or responsibility to compensate victims"* (p.27). This is incorrect: allegations that Lundin Energy Norway carried responsibility for adverse impacts in Sudan have been widely published in Norway and the Norwegian parliament in 2012 discussed a proposal to exclude Lundin Energy Norway AS from further licensing rounds because of its links with human rights violations in Sudan (see also Annex 2).

[43] See, e.g. OECD Due Diligence Guidance for Responsible Business Conduct at p.17 and steps 2.1, 2.2, 2.4, 3.2. That pragmatic approach is also put into action where impacts are identified under Guiding Principle 24, by which of actions to address adverse impacts requires business to "*first seek to prevent and mitigate those [actual and potential] impacts that are most severe or where delayed response would make them irremediable*."

[44] See OECD Due Diligence Guidance for Responsible Business Conduct at p.42.

37. In the circumstances, basic risk prioritisation under the OECD's due diligence scheme meant Aker should have recognised the severe risk represented by the complaints and prioritised the impacts warned about.

38. Further, it should have responded proportionally to the high severity of the potential adverse human rights impact, because that "*is the most important factor in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights*."[45] Instead, as we develop later in this document, it devoted inadequate attention to essential issues such as the value and timing of the reparations expected from Lundin under the Guidelines and proceeded with no substantive stakeholder engagement on such issues. It rushed through a momentous deal with an invalid due diligence.

39. The NCP will appreciate that OECD Complaints, strategically timed, can be a tool to communicate to a company that there is a problem arising in respect of the Guidelines. They can express the risks and the stakeholder's perspective. They provide the chance for the company to take corrective avoidant action to prevent or mitigate a risk. They have the potential for influence greater, for example, than submission of reports or shareholders resolutions.

40. In this claim the Complaints raised a red flag, timed precisely to deal with the emerging situation arising from Lundin's proposed shrinkage. Aker's business activities at the time involved deal making with Lundin. The Complaints were specific as to the risks involved in Aker's proposed conduct. These were the severe human rights impacts to be prioritised in HRDD, the need for which was clear. Instead, Aker's due diligence primarily focused, in essence, on human rights risks where the assessment aligned with Aker's own liability risk. Professor Ruggie, the most authoritative expert on the subject, captured the distinctive and outward-facing nature of HRDD in this manner:

> *"…human rights due diligence must reflect what is unique to human rights. Because the aim is for companies to address their responsibility to respect rights, it must go beyond identifying and managing material risks to the company itself, to include the risks the company's activities and associated relationships may pose to the rights of affected individuals and communities. Moreover, because human rights involve rights-holders, human rights due diligence is not simply a matter of calculating probabilities; it must meaningfully engage rights-holders or others who legitimately represent them…"*[46]

41. That outward facing approach to risk is encapsulated in the Guidelines regime.[47] We submit that – overall – Aker's prioritisation was not prioritised appropriately given the context of the complaint and the risk to remedy. Their 'focus' in due diligence was directed towards the companies it was buying (and towards their liability risk) and not, in substance, with regard to the self-evident potential human rights impacts of the transaction on external stakeholders in Sudan, including as identified by the complainant. We expect that there are few clearer

---

[45] The Corporate Responsibility to Respect Human Rights, An Interpretive Guide, HR/Pub/12/02 at Q.12.

[46] Ruggie, John Gerard. Just Business: Multinational Corporations and Human Rights (Norton Global Ethics Series) . W. W. Norton & Company. Kindle Edition. This analysis is a well-established norm. For example, the IBA publication, *Handbook for Lawyers: Chapter 1 Mergers and Acquisitions and Corporate Restructuring,* explains, "*The key difference between transactional legal due diligence and human rights due diligence (in the sense used in the UN Guiding Principles on Business and Human Rights, is that transactional legal due diligence focuses on risks (i.e. legal, financial, commercial and reputational) to the relevant companies, businesses and/or assets, while human rights due diligence is concerned with risks to people (i.e. risks of having an adverse impact on human rights more generally, regardless of whether these represent a material risk to the enterprise itself).*"

[47] See, for example, OECD Due Diligence Guidance for Responsible Business Conduct Box 1 at p.15.

examples of stakeholders providing a timely and precise warning of a relevant human rights risk. It is regrettable that Aker did not give that warning the attention that it deserved.

Aker weighed Lundin's position over understanding other important facts and so failed to assess the risk appropriately

42. There was a second way in which Aker failed to address appropriately another obvious red flag: the ongoing refusal by its partner in the merger deal to conduct HRDD on impacts of its Sudan operations. As Aker could not rely on any HRDD conducted by Lundin itself, this should have triggered greater depth of investigation by Aker. Their stated approach fails to account for the following highly relevant issues:

- Lundin had on multiple occasions publicly and explicitly rejected proposals to comply with the Guidelines. The examples are many: see, e.g., the rejection in 2012 of a proposal made by Folksam, the largest insurance company in Sweden, that Lundin should initiate and finance an audit to verify the compliance of the Company's operations in Sudan with the UN "*Protect, Respect and Remedy Framework*" and the OECD Guidelines.[48] See Annex 1 for an overview of Lundin's rejection to appeals by stakeholders and their advocates to comply with the Guidelines and advance its objectives.

- Lundin's rejection of the Guidelines in practice was also shown by its consistent refusal to engage with stakeholders or to respond to claims of rightsholders, and its hostile acting towards their advocates. Lundin had presented calls for RBC as a deliberate campaign to damage the company and its lawyers publicly questioned the credibility and integrity of rightsholders.[49] Aker's account of its HRDD does not refer to Lundin's opposition to the requirement of the Guidelines, even though this was a major hindrance for Aker's own HRDD. Had Aker acted appropriately in response to these factors, it would have needed to make a far more substantial effort than otherwise. Aker's account of its HRDD shows that this effort was not made. Simple engagement with the stakeholders – including Complainants – would have led Aker to better understand the risks.

- It is a significant omission that in its description of the identification of risk Aker (a) noted that Lundin denied the alleged crimes but (b) failed to refer to the impressive basis for the decision to prosecute or for the implication that the prosecution showed a high risk that Lundin had indeed contributed to adverse impacts on human rights.

    i. Persons defending criminal accusations are not in the habit of equivocating about their innocence, so the full denial by Lundin itself provides little information. The indicted persons (and their company) – seeking to deny liability for war crimes in an ongoing prosecution – in fact makes it highly unlikely that they will present in public anything other than the strongest assessment of their innocence.

    ii. But Aker must have also known that the Swedish prosecutor had assessed the evidence (which Aker confirms it had not) and had considered that the prosecution should proceed. The prosecutor's announcement on 11 November 2021 showed that, having conducted hundreds of interviews

[48] Annex entry dated 09 April 2012.
[49] See, Dagens Nyheter, Lundin-toppar anlitar advokat som försvarat Milosevic, 16 April 2020.

and having prepared an investigation report of more than 80,000 pages, the prosecutor had indicted the two Lundin Executives and had requested the court to forfeit the criminal benefits from Lundin. The prosecutor considered the evidence to be "*comprehensive*" and they could prove that the indicted persons were complicit in the crimes committed.[50] This was probably the most significant corporate war crimes indictment since Nuremburg and the investigation had been notoriously long and was well-resourced. It was the prosecutor's professional assessment that the evidence was comprehensive and probative of Lundin's crimes.

iii. Despite this, nowhere in Aker's *Response* is there a reasoned assessment that balances that formidable indication that Lundin may be guilty against Lundin's assertion that they are not.

iv. In reviewing these matters, Aker must also have known that the burden of proof in civil litigation is substantially lower than that which applies in a war crimes trial and that the expectation of remedy where a company has contributed to an adverse impact on human rights is lower still. Aker declined to review the evidence. The prosecutor's actions suggested strong grounds for the indictment and implied that there was an appreciable risk that there would be merit in civil claims and that the company had indeed contributed to the harms for the purpose of remedy under the Guidelines.

43. Instead of referencing and weighing appropriately these factors, Aker states that it would have been *"neither necessary nor possible to conduct an independent examination of the facts upon which the indictment against Lundin Energy is based"*.[51] Aker uncritically observes that Lundin itself denies the alleged crimes and having contributed to human rights impacts in Sudan. It also uncritically refers to Lundin's commitment to comply with the UNGPs and the OECD Guidelines. Proper investigation – including into the fact and content of the indictments as strong indicators of the risk that Lundin had contributed to adverse impacts alleged and including into how the Complainants had reached their assessment of the risk of the deal (and they need only have asked) – was appropriate. Without it, Aker had weighted heavily Lundin's account without addressing the contrasting expert views of the prosecutor and stakeholders. They provide no explanation of a reasonable basis on which they could have formed their reported view that there was 'no risk' of contribution.

44. Aker did not find it necessary to examine the facts underlying the allegations. In a risk-based due diligence, the only judicious approach to relevant and severe unexamined allegations is to assume that they indicate the prevalence of high human rights risks. Instead, Aker attached value to the plain denials of wrong-doing by a criminally indicted party who was pursuing a robust legal defence strategy after having publicly rejected proposals to comply with the Guidelines. In the same spirit, Aker's due diligence lent value to Lundin's position that there are no grounds for claims for compensation. Aker's reliance on an obviously biased source of information adds another fundamental shortcoming to its due diligence. It could and should have engaged with stakeholders and to have understood why remedy was due.

---

[50] *Prosecution for complicity in grave war crimes in Sudan,* 11 November, 2021, available at https://www.aklagare.se/en/media/press-releases/2021/november/prosecution-for-complicity-in-grave-war-crimes-in-sudan/.

[51] Aker, *Response*, p.26

Aker's review of Orrön's financial capacity was inadequate

45. Aker's description of how it did not find a connection between the acquired assets and human rights impacts is followed by the following statement:

> *"The human rights due diligence also addressed the financial solidity of Lundin Energy (Orrön Energy) after the transaction. (....) A central issue in a corporate due diligence is to identify and address any potential obstacles for the completion of the transaction. In this case, the transaction could not have been completed unless the corporate bodies of Lundin Energy were confident that the company would be able to meet future liabilities and obligations. Our focus was that Orrön Energy should have a solid financial basis for developing a successful business, which would enable the company to meet its future financial obligations. The main uncertainty concerned Orrön Energy's potential future financial obligations stemming from its Sudan operations. We noted that such obligations would not arise for at least 7-8 years if the litigation were to proceed through all court instances. Our focus was that Orrön Energy should remain a robust company in the years to come. The relevant perspective for assessing Orrön Energy's future financial standing would be a financial analysis of the business and its prospects." (p.27).*

46. So, Aker's due diligence focused on 'the target', but had a further limb. Complainants observe that Aker purported to assure itself that, after the merger, Lundin would be able to carry *"potential future financial obligations stemming from its Sudan operations."* However, it seems that this was part of formal legal requirements for the transaction to go through, instead of following-up on step 3 of HRDD, which is to address human rights impacts that the company risked contributing to via the merger.[52] The complainants assert that Aker apparently did not obtain the required assurance and must conclude that the exercise was not consistent with the expectations of HRDD.

47. Responsibility for remedy under the Guidelines. Aker appears to have assessed Orrön's ability to carry a possible future obligation to pay the prosecutor's fine and forfeiture claim, without appropriately assessing the costs of its potential responsibility to provide remedy. This critical omission shows that Aker's "*customary, limited due diligence investigations of a confirmatory nature of certain business-related, financial and legal information"*[53] was not HRDD.

48. The distribution of dividend: Aker suggests that it was not the merger that significantly reduced the value of Lundin, but a decision by Lundin to distribute the merger consideration as dividend (80% in 271,908,701 new shares in Aker BP and 20% or MUSD 2.220 in cash). Aker further suggests that it is therefore not to blame that Lundin's value went to its shareholders instead of being put away to meet remedy obligations. This is a red herring. Under a statutory merger, shareholders of the target company must be compensated, not the target's former parent company. In addition, the distribution of dividends was described in detail in the Merger plan that Aker negotiated and agreed to. The Board of Directors of Aker BP voluntarily entered into the Merger plan with Lundin on 14 February 2022 and endorsed that "*Shortly before the completion of the Merger, Lundin Energy will distribute all shares in Target to its shareholders by way of a dividend in kind (a so-called lex asea dividend) for the purpose of facilitating an efficient distribution of the Merger consideration directly to its shareholders*[54] The Merger plan also decided that *"As Merger Consideration the shareholders of Target will receive a total cash amount in SEK*

---

[52] Various other steps in the HRDD process hinge on the identification and response to 'contribution'. See examples set out at paragraph 11 above.

[53] Aker BP and Lundin Energy, Press release, *Aker BP and Lundin Energy combine their oil and gas businesses*, p. 9.

[54] Aker BP and Lundin Energy, *EXEMPTION DOCUMENT*, 9 March 2022, p. 1.

corresponding to USD 2.22 billion …[55] Aker accepted the merger structure that Lundin proposed instead of requiring that the access to remedy would remain assured. The deal they agreed involved the distribution of the dividend. By doing so, Aker cooperated with the transfer of Lundin's value to its shareholders and facilitated the adverse impact that the merger would cause or contribute to.

49. Timing of remedy: Aker's assessment of the potential financial obligations was that "*such obligations would not arise for at least 7-8 years if the litigation were to proceed through all court instances*"[56] and "*[t]he point in time where Orrön Energy's financial capacity could potentially be relevant for the victims' possibility of obtaining remedy would arise long after the transaction, probably at least 7-8 years.*"[57] That perspective was an unrealistic assessment of the point in time where Orrön's financial capacity was potentially relevant to the victims' possibility of obtaining remedy, bearing in mind the following:

- First, rightsholders have for decades sought remedy and Lundin / Orrön's ability to fund the same was at all times relevant. Aker states that it looked at "*a potential future obligation to pay compensation to victims*" [emphasis added].[58] We assert that Lundin's responsibility to assess and remediate adverse impacts that the company contributed to already exists today and is not dependent on the outcome of the criminal case. Aker should have assessed the financial solidity of Orrön at the moment of the merger.

- Aker apparently agrees that Orrön's financial situation would be uncertain.[59] We assert that - considering the severity of the adverse impacts - Aker should have assessed the uncertain financial standing of Orrön at any future point in time as too high of a risk. Aker seems to argue that because Lundin/Orrön does not show willingness to participate in a remediation process in line with the Guidelines, the possibility for victims of obtaining remedy would only arise after a positive conclusion of the criminal case. It ignores the fact that Lundin was in breach of the expectations of the UNGPs and OECD Guidelines by refusing any HRDD into these impacts, and also the fact that Aker itself could and should have exercised its leverage on Lundin during the merger negotiations to pressure the company to live up to its obligations under the Guidelines and, alternatively, have discontinued the merger. Instead, Aker contributed to Lundin now not only being unwilling, but also extremely likely to lack capacity to live up to its responsibilities under the Guidelines.[60]

- Even if one takes the outcome of the criminal proceedings as a relevant factor, 7-8 years is an inaccurate assessment of the point in time where Orrön's financial capacity is potentially relevant to the victims' possibility of obtaining remedy. Liability to pay will be ordered *at trial,* far sooner than the "*7 – 8 years*" Aker use. Aker provides no account for why the end of the trial in first instance in around 3 years[61] is not a relevant date for the "*point in time where Orrön Energy's financial capacity*

[55] Idem, p. 28.
[56] Aker, *Response*, p.27.
[57] Aker, *Response*, p.29.
[58] Aker, *Response*, p.29.
[59] Aker, *Response,* p.27.
[60] Aker, *Response*, p. 27.
[61] The last hearing is scheduled for 12 March 2026, and the court is expected to pass judgement by the end of that year, 3 years away from now (or 5 years from December 2021 when the due diligence was performed).

was potentially relevant to the victims' possibility of obtaining remedy." Orrön's auditors use that date, but Aker do not.[62] A conviction at trial will show that Lundin's denial of wrongdoing does not stand scrutiny. Aker's approach that there was at least 7 – 8 years assumes that following a conviction for war crimes, there will be an arguable basis for an appeal and that it will be in the interest of the company to pursue all avenues of appeal. That is no basis on which Aker should have identified the relevant period as 7 – 8 years, when the liability risk will be much clearer at the end of trial.

- The imminent prospect that the trial will conclude within a few years from now again makes the small capitalization of the company relative to the forfeiture sought highly concerning. Aker provides no assessment that the company – in the event of conviction – is likely to suffer a significant reduction in value, again impacting its abilities to contribute to the provision of remedy. Aker gives no account of how a small company with a substantial forfeiture expense for war crimes, will be able to produce or access capital to pay. These factors will be known in around 3 years' time, not 7 - 8.

- Relatedly, Orrön (and previously Lundin) consider the criminal liabilities to be a contingent liability.[63] No provision is recognised by the company.[64] The company's auditors in turn treat this as a key audit matter and note that "*any potential fine or forfeiture could only be imposed after a conviction in a trial*" and that the company treats it as a contingent liability.[65] If there is a conviction at trial, the assessment of whether there should be a provision is likely to change. There will no longer be any basis to assert that there is "*no circumstance*" in which the fine and forfeiture would be payable. On conviction, by around the end of 2026, the contingent liability for the forfeiture may well need to be provided for, even if there is to be an appeal.[66] Aker provides no assessment for how a prudent company of limited liquidity would elect to raise, manage, or save the sum provided for. This is consistent with our point above, as it again suggests that it is unsound for Aker to have identified the relevant period as 7 – 8 years, as a provision for the forfeiture sum may need to be made well before then.

50. We note that Aker have studiously failed to assert that Orrön could presently meet the costs of forfeiture and Guidelines compliant compensation. We submit that one key inference to be drawn from Aker's focus in their submissions on the future value of Orrön is that they have been silent about Orrön's *present* value because – consistent with the evidence we have presented – there is no sound basis that Aker (or indeed the NCP) could assert that Orrön is robust enough to pay those sums.

---

[62] See further discussion below concerning the approach of Aker's auditors.

[63] i.e. "*a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence on non-occurrence of one or more uncertain future events.*" International Accounting Standard 37 Provisions, Contingent Liabilities and Contingent Assets (IAS 37) at [30].

[64] Orrön Energy *Annual and Sustainability Report 2022*. Because Orrön refutes that there are any grounds for allegations of wrongdoing by any of its former representatives and as it sees "*no circumstance*" in which a corporate fine or forfeiture could become payable, no provision is recognised by the company.

[65] Ibid, Auditor's report.

[66] The company's auditors apply IFRS standards, by which contingent liabilities are to be assessed continually to determine whether an outflow of resources embodying economic benefits has become probable. International Accounting Standard 37 Provisions, Contingent Liabilities and Contingent Assets (IAS 37) at [30].

51. Future financial ability of Orrön. The focus on Aker's future liability is no answer to the fact that the merger deal left the company at a far greater risk of being unable to pay for the costs arising from Lundin's former Sudan operations. As Aker rightly points out, there are obviously many unknowns about the future. Aker specifically adds that Orrön's financial situation at a future point in time is uncertain.[67] Aker further assessed that Orrön had growth potential, which is self-evident for a debt-free company with MUSD 130 in cash. It is also self-evident that it is not advisable to rely on a corporation's self-presentation to assess its financial prospects. A share price reflects the collective wisdom of the market and is the most objective indicator of a company's profitability and financial prospects. The past 6 months, Orrön's share price has been stable around SEK 7, half of what it was one year ago, showing a mediocre market confidence in its future profitability. Orrön's financial prospects depend foremost on the price of its only product, electricity, which is notoriously hard to predict. Aker express confidence in Orrön's prospects without providing a substantial analysis of how Orrön will be able to pay a forfeiture of MSEK 2,381[68] at any moment in the future, and much less how it will carry any additional financial burden of reparation (in circumstances where the estimates of the reparations burden are far greater than the forfeiture).

Aker failed to properly analyze the cost of remedy

52. The other crucial substantive issue that Aker should have properly assessed in its human rights due diligence is the cost of remedy. Aker rightly points out that due diligence on the merger required an assessment of Lundin's ability to meet future financial obligations, specifically those stemming from its Sudanese operations.[69] A credible indication of the costs of effective remedy of adverse impacts would be essential to the assessment. Nevertheless, Aker concluded that Lundin would be able to carry its future financial obligations without assessing the costs of remedy. Aker justifies this critical failure in five ways:

- Aker attempts to discredit the available indication that costs will be substantial.
- Aker points the finger at victims for not bringing formal reparation claims.
- Aker lends weight to Lundin's own denial of wrongdoing and of any grounds for compensation claims and expresses trust in Lundin's policy and public commitment to comply with the UNGPs and the OECD Guidelines
- Aker found only limited specific information about the size of a remedy claim.
- Aker echoes Lundin's position that the conclusion of the criminal proceedings should be awaited before considering future financial obligations stemming from its Sudanese operations.

53. We explain below why Aker's approach was wrong. A common strand is that Aker drew conclusions about remedy based on what it found to be incomplete information but without taking the obvious and necessary steps to inform itself. For example, we identify that in several ways simple stakeholder engagement with the Complainants to enquire about gaps

[67] Aker, *Response*, p. 29.
[68] On 29 August 2023, the Prosecutor raised the claim for forfeiture of criminal benefits from SEK 1,391 to MSEK 2,381. See: https://www.orron.com/the-swedish-prosecutors-claim-for-forfeiture-of-economic-benefits-in-the-sudan-legal-case-has-been-increased/
[69] Aker, *Response*, p.27.

that Aker believed existed would have corrected much of their error. But Aker's rapid due diligence did not involve them making such simple enquiries.

Aker attempts to discredit the available indication that costs will be substantial

54. According to the Swedish prosecutor, the adverse impacts of the crimes that Lundinallegedly aided and abetted were extraordinary severe.[70] The costs of their effective remedy will be commensurate. The Complaints provided Aker with estimates based on what was then the only available estimate of the monetary value of damages. This estimate is not an assessment of the costs of effective remedy, but an indication of the value of damages that people suffered. They are based on the calculations that Prof. James Levinsohn presented in legal proceedings in the USA in 2006.[71] The estimate is incomplete, deliberately conservative, and intended to "g*ive an impression of the likely magnitude*" of damages.[72] It was the best estimate available at the time of submission of the Complaints and a compelling basis for identifying a grave risk that Lundin would fail a crucial responsibility under the Guidelines.[73]

55. Further, in August 2023, the plaintiffs in the Lundin trial filed civil claims based on the *Legal Opinion on the Application of Sudanese Tort Law: Lundin Oil AB Case* by Dr. Mohamed Abdelsalam Babiker, 14 August 2023.[74] His detailed examination offers a reliable basis for estimating compensation requirements under Sudanese tort law for four categories of damages. In the absence of a consultation process with rightsholders, criteria that are applied by the incumbent court system offers a valuable indication of the cost of remedy for damages. The application of Dr. Babikir's expertise in Sudanese tort law to the estimated occurrences of four categories of damages, results in the following estimate of their monetary value:

[70] https://unpaiddebt.org/resources/documentation/. See also Nationella Åklagarmyndigheten, MEDHJÄLP TILL FOLKRÄTTSBROTT, GROVT BROTT (Lundin och Schneiter) (0104-K48-10), Case AM-35463-10, Stockholm, 11 November 2021.

[71] Prof. James Levinsohn, *Supplemental Expert Report for Presbyterian Church of Sudan v. Talisman Energy, Inc.*, for Civil Action No. CV 0882 (DLC) before the Manhattan District Court, 26 May 2006.

[72] See: https://unpaiddebt.org/calculating-the-debt/. It is noteworthy in this respect, that the estimate in the Complaints undervalues the "*lost income*" category by a factor 3 compared to Prof. Levinsohn. Also, actual remedy usually incurs multiple additional types of costs that are not included in the estimate.

[73] The damage estimate of MUSD 1,787 at https://unpaiddebt.org/calculating-the-debt/ explains that *"Lundin Energy can be held fully liable for these damages, in which case its debt would be MUSD 1,787."* It then continues "*It can also be argued that its business partners Petronas and OMV share the responsibility in proportion to their stake in the Lundin consortium, in which case Lundin's debt could stand at MUSD 714, …*". In their 22 March 2022 letter to Aker BP, 26 South Sudanese and European organizations, referring to this estimate, touched only on the several responsibility option, as this already offered ample reasons to identify the risk that the merger transaction would obstruct access to effective remedy. The Complaints and our *Submission* refer to the damage estimate of MUSD 1,787, but left the question open whether Lundin and its former business partners Petronas and OMV would be jointly or severally responsible for effective remedy. We contend, however that a primary tortfeasor, as Lundin was according to the Swedish Prosecutor, can probably be held fully responsible for damages in either case. It is therefore not unreasonable to assume joint responsibility, and it is a reasonable expectation of Aker to inform themselves about this question as part of their due diligence.

[74] Available with the Stockholm District Court, TR B 11304-14, Aktbil 1518, Underrättelse e-skickat till R.

Estimated compensation requirement for damages under Sudanese tort law[75]

Kind of damage	*Occurrence*	*Value*	*Total (USD)*
Deaths	12.000	$ 84.033	$ 1.008.396.000
Attempted homicide	75.000	$ 84.033	$ 6.302.475.000
Forced displacements and loss of house and belongings	140.000	$ 42.016	$ 5.882.240.000
Cattle lost	500.000	$ 201	$ 100.500.000
Total			**$ 13.293.611.000**

56. No interest is applied for this estimate because Dr. Babikir draws on current monetary values. The total is much higher than the earlier estimate, but may actually be on the low side, not least because it considers ignores important other types of damages like loss of income and enslavement. Again, this recent estimate is not an assessment of costs of remedy, but a relevant indication of the magnitude of the remedy effort that will be required, based on the advice of a Sudanese legal expert. We believe that this more recent estimate is the best available point of reference in the Specific Instance.

57. Aker now describe that they discount the available estimates. They note that the figures were produced to them in the Complaints via PAX's website. They criticise a lack of information on what they agree is "*obviously one of, if not the most crucial factual issues underpinning the complaint*".[76] Their failure, in that context, to make simple enquiries to deal with the lack of information is astonishing. They did not engage with us, the stakeholders who had published these figures to find out how the sums had been calculated. They also appear to have taken no steps to engage the expertise of persons such as Prof. Levinsohn or of Dr Babikir. They took no steps to enquire as to whether other experts – or those among our group who have dedicated decades to forming an expertise on this issue – were available to clarify any aspect. They seem to have just formed an amateur impression uninformed by expertise on the value of the damage in Sudan that they could discount the available estimates and go ahead with their deal. This was not a serious or proportionate response to the severe risks that they were warned about.

58. The Complaints focus on the cost of reparation, but as Aker rightly points out, remedy under the Guidelines can comprise a wide range of measures. Additional costs for the process itself, management costs, and the range of possible measures will have to be included in the cost of remedy. The OHCHR states that " ... *it is important to understand what those affected would view as an effective remedy,* ....".[77] The same expectation is expressly applied to the OECD Guidelines.[78]

59. It is therefore relevant to note the rules and customs for doing justice for suffering and damages in the Nuer culture includes economic rehabilitation, reparation, restitution and compensation. We would have been able to explain that, had Aker engaged.

---

[75] These figures are derived from available expert advise in court proceedings, multiplied by estimates of the numbers of impacted people and looted cattle that are derived from publicly available data from humanitarian organisations, the WHO, the United Nations and others with first-hand knowledge of the situation. We submit that these estimates are reasonable and not disproportionate to the losses incurred.
[76] Aker, *Response*, p.14.
[77] OHCHR, *Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector*, 12 June 2017, p. 13.
[78] See, e.g. *OECD Due Diligence Guidance for Responsible Business Conduct*, Annex at Q50.

60. Aker appears to agree that there is no straight line between tort law and effective remedy. A fundamental difference is that the latter must be agreeable for the rightsholders. It is best practice in the design and execution of corporate remedy and reparation processes to consult and seek consent from the rightsholders for each and every step. Complainants represent adversely affected communities and can confidently state that pecuniary compensation for remediation of physical and moral damages is customary in Nuer society. Truth speaking and apologies are usual additional requirements. Aker's expectations about the costs of reparation include that "*[i]t seems more realistic that any measures to aid the population in question would be directed at long-term financial support to relevant projects in South Sudan aiming at improving living conditions for the population. Such support would require financial contributions of more limited amounts over a longer period.*" No explanation is provided. Remediation is required when an enterprise identifies that it has caused or contributed to actual adverse impacts.[79] It is settled that under the Guidelines "*remediation"* and "*remedy*" refer to the both the process of providing remedy for an adverse impact and "*to the substantive outcomes (i.e. remedy) that can counteract, or 'make good', the adverse impact.*"[80] Aker does not appear to appreciate the requirements of a remediation and reparation process. They make no attempt to identify how such support would make good the adverse impact towards the stakeholder victims we represent. Simple stakeholder engagement with us – prior to the actioning of the merger – would have informed Aker as to the hard realities of what remedy might apply in Sudan, informed as expected by the perspective of those impacted. Instead, they produced rather quixotic and unsupported conjecture about financial support for living conditions, with no apparent basis in the Guidelines and with no engagement with the victims and the facts on the ground.[81]

61. Moreover, we were surprised and confused by Aker's *Response* that *"it is difficult to see how a calculation of interest would be a relevant factor in the context of remedy under the Guidelines to address impacts of 20 years ago'*[82] and that interest is *"not a relevant factor in this context."*[83] Any remedy for historic pecuniary losses that did not account for inflation would be wholly ineffective. According to the European Court for Human Rights, reparation involves *"all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach."*[84] Inflation increases the price of goods and services over time. It is therefore necessary for interest to be added to compensate a victim for not being reimbursed at the time of loss. Any human rights lawyer, judge or reparation mechanism would perform an adjustment for inflation to reflect current prices where a sum is sought for historic losses.

62. Aker's dismissal of the role of inflation in the economy and the consequent need for interest to be applied in remediation processes, is incomprehensible. Consultation with the

---

[79] See, e.g. OECD Due Diligence Guidance for Responsible Business Conduct, at 6.1.

[80] See, e.g. OECD Due Diligence Guidance for Responsible Business Conduct, Annex at Q49.

[81] As stated in the OECD Due Diligence Guidance, in identifying forms of remedy as well as in designing processes to enable remediation, engaging with impacted stakeholders is key. We believe this point is uncontroversial. Aker could have consulted any expert advice, for example the UN Working Group on Business and Human Rights, that states that "*Reparation needs to be victim-centred. A victim-centred approach to remedies requires a participative and active role of victims, including impacted communities (…). Communities affected by business-related abuse should be part of the decision-making process at all stages of the remediation process*." See Report of the Working Group on the issue of human rights and transnational corporations and business enterprises, *Implementing the third pillar: lessons from transitional justice guidance by the Working Group*, 8 June 2022, p. 20. Moreover, in the same report the UN Working Group explains that financial support for development projects aimed at improving living conditions cannot be understood as reparation for individual victims of human rights violations and abuses *per se* – reparations only count as reparations if they come with the recognition of responsibility.

[82] Aker, *Response*, p. 15.

[83] Aker, *Response*, p. 16.

[84] ECHR, *Stolyarova v. Russia* (no. 15711/13) at §75.

stakeholders (who had provided the estimate) was expected by the Guidelines. It would have led Aker to understand that they could not arbitrarily half the indicated amounts. We are confident that advice from specialist practitioners would have yielded the same insight. Aker's error is important as it demonstrates the lack of reasoned or informed analysis of its due diligence.

63. The Complainants argue that, as part of its human rights due diligence on the merger with Lundin, it was not the responsibility of PAX but of Aker to assess these costs, or at least to come to a credible, well-informed assessment of the risk of these costs being much higher than the value of the assets Lundin would be left with. Aker could and should have reached out to affected stakeholders, to PAX, and/or to independent experts to seek clarification on the estimates that were out there, and inform themselves on the potential height of the costs for remedy.

64. Aker's squabbling about the estimation and the calculation of interest is a distraction from the main point that Aker did not assess the cost of effective remedy and ignored the available information that showed a major risk that Orrön would be unable to meet future financial obligations and fulfil the expectations of the Guidelines.

<u>Aker points the finger at victims for not bringing formal reparation claims</u>

65. It was clear to Aker that there was a risk related to human rights impact that they needed to consider in connection to the transaction.[85] Also, Aker states that it was aware of the claims for remedy raised by the victims.[86] The company then observed that no formal claim had been raised and suggests that claims lose relevance for a HRDD process if rightsholders do not raise them in a formal procedure.[87] The Guidelines do not support that the process of assessing human rights impacts is made contingent on whether affected people raise claims through formal procedures. Aker argues that remedies are available to the victims in the Swedish legal system to assert their claims against Lundin, suggesting that there is no need for them to raise a claim against Aker. Prof. Emberland argues that no right to remedy is denied or delayed until before the Swedish legal system has had the opportunity to deal in substance with a claim for compensation. His supporting line of argument is his understanding that the Swedish legal system is effective when it comes to handling civil claims for damages. We contend that this is not so in this case.

66. The UN Working Group on the issue of human rights and transnational corporations and other business enterprise asserts that 10 years after the adoption of the UNGPs, victims still face numerous systemic or procedural obstacles to accessing effective judicial remedies.[88]

67. The UNGPs identify three legal and three practical and procedural barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed through legal procedures.[89] The legal barrier that applies in this case is "*The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the*

[85] Aker, *Response*, p. 26.
[86] Aker, *Response*, p.28.
[87] Aker, *Response*, p. 29.
[88] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade*, A/HRC/47/39, 22 April 2021, p. 18.
[89] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade*, A/HRC/47/39, 22 April 2021, p. 18.

avoidance of appropriate accountability;"[90] The raising of this barrier through the merger is manifest in this case and is the core of the Complaints.

68. All the three practical and procedural barriers that are identified in the UNGPs equally apply. Firstly, "*The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support (...) or other means;"* We would like to note in this respect that the Swedish prosecutor stated last November that the 32 plaintiffs in the war crimes trial will have no access to right to reparation and compensation through Swedish legal procedures.[91] The reason being that the court awarded Orrön's request that before considering a civil claim, each plaintiff must deposit €45.000 as collateral for Orrön's legal costs in case their claims will not be awarded. Secondly, *"Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;"* Claimants can confidently assert that the claimants lack the resources to secure legal representations for their civil claim procedures. Thirdly, "*There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants".* Swedish law does not know collective action procedures, obliging each of the estimated 160,000 victims to start individual legal procedures.

69. Obviously, the absence of access to adequate legal procedures to claim remedy makes it all the more important for Aker to ensure that Lundin's HRDD (and their HRDD into the situation) is responsive to the need for full remedy to make good the damage consistent with the Guidelines.

70. Aker writes that *"PAX has emphasized that the estimates of damages must be determined by independent experts, yet there seems to have been no attempt at obtaining such evaluation during the seven years that has passed since the estimate was presented".*[92] However, in the context of the merger it was the responsibility of Aker to assess potential and actual adverse impacts, not of the victims or their advocates.

71. In addition, Aker brings forward that "*the unclear nature and scope of the claims was an element in understanding and assessing the scope of Lundin Energy's potential liability*."[93] It is a mystery how the unclear nature of anything would meaningfully inform the assessment of anything else. Such neglect has no place in a risk-based due diligence, the more so after a 'red flag' situation has been identified. We must again conclude that what Aker did does not qualify as HRDD.

Aker finds only limited specific information about the size of a remedy claim.

72. It is incomprehensible that awareness that there was only specific information available about the size of a remedy, did not make Aker search for what was missing for its assessment. As we have explained, basic stakeholder engagement (by asking those who had produced the materials setting out the risk) should have been done to fill the information gaps that they now identify.

Aker echoes Lundin's position that the conclusion of the criminal proceedings should be awaited before considering future financial obligations stemming from its Sudanese operations.

---

[90] *United Nations Guiding Principles*, p. 29

[91] Stockholm District Court, Chamber 4, *Minutes*, 2023-11-22, Proceedings Annex 1645, Case number B 11304-14, Document ID 2790871, p. 11.

[92] Aker, *Response*, p.16.

[93] Aker, *Response*, p. 29.

73. We already argued why criminal proceedings cannot substitute for a company's responsibilities under the Guidelines.

74. It is disconcerting to read to what extent Aker relies on Lundin's information and how faithfully they echo the reasons put forward by Lundin to justify its rejection of responsibilities under the Guidelines. It takes two to tango, but Aker tries to hide its role in the transaction with the remark "*The transaction structure and the step plan to complete the transaction was developed by Lundin Energy and presented to Aker BP.*"[94] Not unlike Lundin, Aker considered no other financial responsibilities for Orrön than the criminal fine and forfeiture claims. Not unlike Lundin, Aker claims that it would be impossible to examine the facts underlying the indictment. Not unlike Lundin, Aker considers Lundin Energy AB to be the sole retainer of the company's Sudanese legacy. Not unlike Lundin, Aker is turning a blind eye to Lundin Energy Norway's direct links with Sudan, et cetera. During the presentation of the merger agreement on 21 December 2021, when asked what the transaction would mean for the right to remedy of victims of war crimes, Øyvind Eriksen, the President and CEO of Aker ASA who led the event, passed the microphone to Lundin's CEO Nick Walker to answer the question on Aker's behalf. This illustrates the picture that emerges from what Aker has shared about its due diligence: that during as well as after the merger negotiations, Aker failed to effectively question the RBC dimension of Lundin's transaction offer, while lending credence Lundin's defense of its Sudanese legacy, as well as into its obviously problematic understanding of RBC.

Aker's contribution to adverse impact through its own actions

75. Professor Ramasastry – who has unparalleled expertise in business and human rights, including as chair of the UN Working Group – has provided the NCP with a serious critique of the performance of the Company's due diligence.[95] She concurs with Dr. Van Ho – another eminent expert – that when a business undertakes a merger or acquisition in a manner that effectively prevents victims from accessing an effective remedy – either through the denial of process or the effective denial of substantive reparations – the business has contributed to the denial of the right to remedy. She explains that "*businesses should account for this in the process of their due diligence and the failure to do so, and to mitigate the impact of their conduct on the realisation of the right to an effective remedy, is a failure to respect human rights.*"

76. Applying the relevant factors identified in the OECD RBC Due Diligence Guidance for determining when a company's actions constitute contribution, as analysed by Professor Ramasastry:

- 1) The extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring; 2) the extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability; 3) the degree to which any of enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring.

- Professor Ramasastry noted that Aker's conduct in the context of the merger may have contributed to the denial of remedy for rights holders and should be analysed in this context.

---

[94] Aker, *Response*, p. 12.

[95] Professor Anita Ramasastry, *Expert Opinion on the Issue of Human Rights Due Diligence and Access to Remedy in the Context of Mergers and Acquisitions*.

- Professor Ramasastry noted that Aker do not appear to have used their leverage to secure assurances of remedy during the negotiation of the merger.

77. After Professor Ramasastry filed her report, Aker provided what they say is their first substantive account of their conduct in these proceedings. This enables the following observations:

    - It is now confirmed by Aker that they did not use their leverage to seek assurance of remedy during the negotiation of the merger. For example, they did not seek contractual assurances and warranties from Lundin with respect to unaddressed remedy obligations (albeit they instead protected themselves by obtaining the indemnity from Lundin).

    - It is now confirmed by Aker that they considered they were fully aware of the alleged impacts, of the fact that the nature of the allegations and the fact that an indictment had been issued identified a risk related to human rights impact, and of the claims for remedy raised by the victims.

    - It is confirmed that although Aker knew of the alleged adverse impacts, it directed its due diligence to the narrow focus around the companies that it acquired rather than enquiring in any depth into possible impacts of the merger into human rights claims.

    - It is confirmed that Aker did no substantive further investigation by stakeholder engagement into the claims we were making (and instead discounted them for reasons that we could have readily clarified);

    - Finally, it is now confirmed by Aker that Aker did nothing further to attempt to mitigate the ongoing impact of lack of access to remedy for persons from South Sudan.

78. At any point in time during the process of the merger:

    - It was open to Aker to recognise that Lundin's defence of criminal proceedings was not a response to allegations that Lundin had contributed to serious human rights harms in Sudan. It was open to Aker to recognise that the expectation that business respect for human rights involved Lundin coming to an assessment of the harms to which it had caused or contributed, and then remedying that impact. Instead, Aker only refers to Lundin's policy commitment to the UNGPs and OECD Guidelines and its denial of responsibility for contribution to human rights violations in Sudan. Aker does not reflect on Lundin's long history of refusals to conduct the required HRDD.

    - It was open to Aker to weigh fully the serious implications that contribution was met that is implied by the fact that the professional prosecutor believes that the evidence meets the far higher threshold for criminal responsibility. It was open to Aker to accept that the fact that they had elected not to consider the factual material underlying the prosecution meant that they should have adopted the approach that the risks identified by the prosecutor were real.

    - It was open to Aker – considering the severity of the human rights risk involved with the proposed merger – to prioritize and insist on the possibility of engagement

with affected stakeholders. Instead, Aker willingly agreed to elective secrecy requirements which it now uses to justify its lack of stakeholder engagement. It was open to Aker to negotiate any appropriate term needed to secure the remedy. Thus, Aker willingly engaged in contractual terms that they confirm hindered their ability to conduct adequate HRDD. This was an elective problem that they could have solved. We have set out our fuller response as to why Aker should not have been prevented by confidentiality or insider trading issues from adequate stakeholder engagement.

- It was open to Aker to independently value the claim and/or conduct independent scrutiny if they considered that the available valuations of the cost of remedy that they were aware of were inaccurate. It was open to Aker, for example, to engage with those producing the estimates, including those filing the Complaints. It was open to them to seek to understand whether liability was joint where multiple tortfeasors were involved.[96] And it was open to them to correct their ongoing failure to understand that past losses must – if compensation is to be meaningful – be adjusted for inflation. Instead, elementary errors persist in their analysis of the situation, which would have been remediable by correctly targeted due diligence and stakeholder engagement.

- It was open to Aker to produce or obtain a specific analysis about the conduct of HRDD in the circumstances. If their in-house expertise was lacking – which the elementary errors in their analysis suggest – they could have obtained professional advice.

- Aker seeks to argue that there is perhaps something too complex about this issue for them to have conducted fuller human rights due diligence. That cannot be the case. The value of the transaction, app. MUSD 12.000, scale of the acquisitions involved and the severity of the alleged human rights issues both made it proportionate to assess the situation in-depth.

79. In her *Response to Response and Submissions of Aker BP AS and Aker ASA,* Prof. Ramasastry notes that, under the prevailing circumstance "… *proper due diligence (not limited to Lundin Norway's assets), was essential to Respondents commitments as adherent to the UNGPs and OECD Guidelines*."[97] In her expert opinion, all factors are present to make it "*possible that Aker's conduct constituted contribution"*.[98]

80. Subsequently, Prof. Ramasastry observes that all three factors that are to be taken into account when assessing if an enterprise has contributed to adverse impacts – in short: encouragement or motivation of an adverse impact by another entity; foreseeability; and failure to mitigate the adverse impact or decrease the risk of the adverse impact – seem to be in play.[99]

---

[96] This means that the company had the option or opportunity to investigate and determine if, in a situation where several parties were responsible for a wrongful act, those parties could be held jointly liable. Joint liability implies that each party can be held responsible for the full extent of the damages or loss resulting from the wrongful act, not just for their individual part. This can be relevant in legal cases where harm or damage has been caused by the actions of multiple entities or individuals, and there's a need to understand how liability is shared or apportioned among them.

[97] Professor Anita Ramasastry, *Response to Response and Submissions*, p. 5.

[98] Idem.

[99] Idem, p. 5-6.

81. We conclude that Aker has contributed and continues to contribute to adverse human rights impacts.

(F) Conclusion

> *"It is like that we don't exist, like there were no human beings in that area. It is that denial what really pains us, because we are human beings and want to be recognised."*
>
> Rev. James Kuong Ninrew Dong, interview, Juba, 2016. available at www.unpaiddebt.org

82. It may assist the NCP if we attempt to strip this case to its essence.

83. What has happened?

- A grave harm has occurred, and those who suffered it seek remedy. The human rights breaches alleged could not be more serious. Populations killed and displaced. Homes and livelihoods destroyed. There has been no remedy to date.

- The efforts to secure remedy have taken many forms. Among other things, they have resulted in an unprecedented indictment of senior officials of a business enterprise for complicity in war crimes. By its nature, the indictment alleges that the company must have caused or contributed to massive adverse impacts.

- There can be little doubt as to the seriousness of that situation, as the prosecution involves one of gravest accusations levelled against corporate conduct since the Nuremburg prosecutions.

- Nor can there be any doubt that the allegations bear serious scrutiny. They are well documented in the public domain. They are sufficiently well evidenced for the extraordinary prosecution to proceed.

- Remedy, though required, is rare when corporations are involved in severe human rights abuses. The barriers to remedy are especially high where, as here, death, displacement and impoverishment are involved.

- Prosecution is a part of the remedy matrix, but by no means all. Here, fines levied by the prosecution are to be disbursed to the Swedish government, from Orrön's funds. That would be a punishment. But the prosecution will not compensate – or otherwise make any remedial order – in respect of the thousands of victims whose interests are advanced in this OECD complaint. The prosecution is not directed to that purpose, which some other mechanism must provide for, if those victims are to see individual remedy.

- Alongside prosecution, a common strand in the victims' campaign for remedy has therefore been to hold to account the company and its successors in liability. This includes seeking a grievance mechanism and remediation consistent with the United Nations Guiding Principles on Business and Human Rights, as also expressed in the OECD Guidelines. These standards represent the regime by which corporations are expected to understand and remedy harms to which they have caused or contributed.

- But Lundin refused simple requests to comply. It rejected resolutions promoting a grievance mechanism. It specifically refused to commission an independent investigation into damages and losses incurred by people whose human rights may have been affected by the Company, its legal predecessors and affiliate entities. It provided no remedy mechanism.

- There is no doubt – and this is confirmed by Aker – that Lundin/Orrön have been designated to carry liability to compensate the victims of the events in Sudan. That the recent iterations of the Lundin Group and its various entities had not themselves produced the situation in Sudan is to miss the point. Breaches of human rights caused or contributed to by a company require remedy and there is no dispute that Lundin/Orrön carried that risk. Nor is there any sensible dispute that if Orrön cannot fund remedy, then the Lundin Group's ability to remediate will be extinguished.

- There was a business relationship between Aker and the Lundin Group. The activities in that relationship culminated in the deal by which 98% of Lundin was bought by Aker. In all appearances, the merger served to protect Lundin's shareholders from the potential consequences of the war crimes trial. Aker quickly grasped this unique opportunity to grow double in size.

- When the merger was well underway and while Aker and Lundin were in confidential negotiations, this OECD Complaint was filed. A full warning was provided. There was a chance for a course-correction to safeguard against the risk that Aker and Lundin's deal could stymie the victim's remedy.

- We say that the NCP should confidently find that the merger agreement massively increased the risk that Lundin/Orrön could not meet the costs of forfeiture or reparations.

- Let us explain using Figure 1, which is a scale model that illustrates the effect of the deal between the companies.

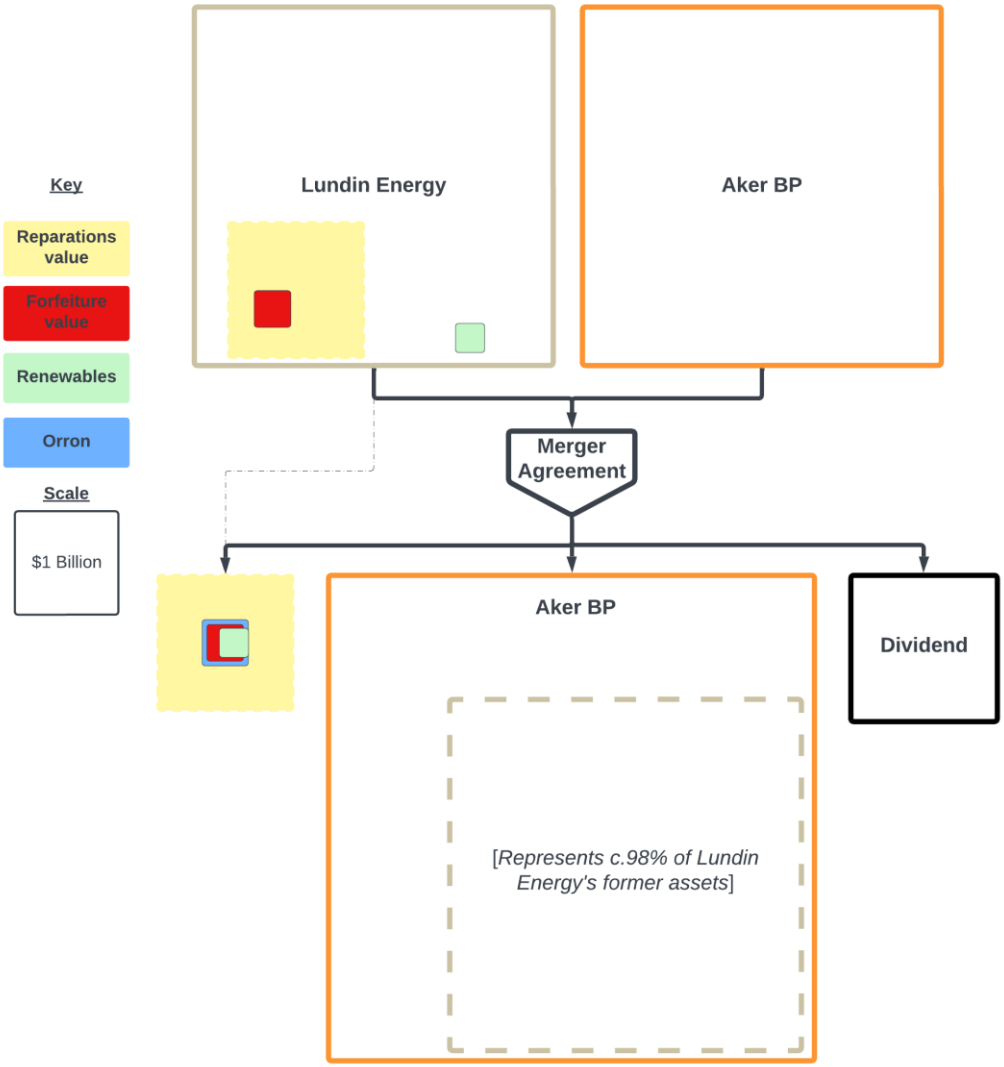

Figure 1 - Scale representation of the effect of the merger agreement on the relative size of the companies Lundin Energy, Aker BP and Orrön (illustrated by Capex in USD), compared to the estimated value of forfeiture and reparations (in USD). After the merger, Orrön (in blue) is scarcely visible behind the square representing the forfeiture sought by the Swedish prosecutor. It is dwarfed by the estimated reparations value.

84. Figure 1 shows that the risk of the merger warned of in the complaint was undeniably real and that then it became a reality because Aker decided to proceed with the merger. Aker elected voluntarily to execute the merger agreement that saw Lundin's assets transferred to Aker and that provided for the distribution of the dividend. It was <u>because</u> the companies implemented their deal that the relative ability of Orrön to pay was a fragment of Lundin's. Aker finalized the merger without amending the deal or requiring any safeguards (as had been suggested in the Complaint to prevent the problem) to ensure that the obvious and stark risk was mitigated. They provided for no fallback to preserve the interests of the stakeholders in Sudan should their (cursory) review of the likelihood, timing and sum of reparations not be accurate, even though they had not clarified their (mis)understanding of such issues. We say that their account of due diligence shows that they fail <u>still</u> to address (or even understand) adequately or at all the overwhelming diminution of access to remedy that their deal imposed on the victims in Sudan.

85. Figure 1 illustrates that it was the merger agreement and its implementation that transformed Lundin from a company that could quite likely raise capital to meet forfeiture and reparations costs into one that was *far* less likely to be able to do so (indeed, it was highly unlikely to be able to do so). Despite Aker's equivocal view of the prospects of the company, the cash and renewables assets retained by Orrön are demonstrated to be (objectively) trivial in scale compared to Lundin pre-merger. The NCP will note that the position illustrated is now worse than it was immediately post-merger (as the forfeiture sought has increased, to more than the capex of the company).[100] Despite the situation and all the evidence, Aker found 'no risk' of contribution. We respectfully submit that there are no grounds on which the NCP can find that there was not such a risk (and should the NCP not agree with our assessment or should they require further insight, we submit that there should be expert assessment of the financial issues raised).[101]

86. It was the responsibility of Aker to assess potential and actual adverse impacts in connection to the merger with Lundin. Nevertheless, Aker did not seek appropriate information about the victims' need for reparation other than what Lundin had to say and what was already publicly available but which it considered invalid. Aker falsely suggests that it was impossible to assess the costs of remedy. The company could and should have reached out to affected stakeholders, to PAX, and/or to independent experts to seek clarification on the estimates that were out there and inform themselves on the potential height of the costs for remedy. Time pressure and confidentiality of the merger negotiations may have complicated this task, but this does not justify such a failure to conduct HRDD. Aker incorrectly assessed that there was no risk of contribution. It abandoned the responsibility to use its leverage, and additionally failed to prevent or mitigate the consequences after being warned about the risks that it was running.

87. The information provided by Aker shows that Aker's due diligence did not properly consider the cost of remedy, which was crucial to the assessment of the most critical human rights risk, that it had been warned about and that it was aware of. The risk that Aker had identified was that Lundin would no longer be able to carry the potential cost of its Sudanese legacy. Consequently, Aker obstructed access to the right to effective remedy and facilitated significant adverse impacts by perpetuating ongoing (unremediated) impacts. Aker's due diligence can therefore not be considered acceptable HRDD under the Guidelines, and consequently, the two Aker companies contributed to the adverse impacts on the right to remedy.

Our hopes for this process

88. We conclude in what we hope has been our consistent spirit throughout these Complaints – we remain motivated by the hope that the NCP, Aker and our organisations can work to keep all roads to remedy open to the victims.

89. It is unfortunate that the mediation process that the NCP was so kind to offer did not achieve a resolution. We believe that only through engagement with victims, Aker can resolve their

[100] See Table 1 in the introduction to this paper.

[101] If the NCP harbours any doubt that we are incorrect about such issues, we submit that it would be appropriate for this important part of the investigation, that they seek independent accountancy advice as to the relative likelihood that Lundin and then Orrön could fund forfeiture, the cost of civil claim and/or the costs of reparations. We submit that there is no sound basis on which the NCP could come to a view that Aker had in their due diligence or has since provided any adequate explanation for why their deal did not massively increase the risk that Lundin/Orrön could not meet the costs of forfeiture and reparations. Despite this Aker found 'no risk' of contribution.

differences. We – the Complainants – would of course be willing to assist in facilitating and to participate in that process, and we stand ready to assist with any practical steps we might take to assist remedy for the victims in Sudan. We therefore suggest that, in addition to an assessment of whether the Guidelines have been breached and associated recommendations, the NCP's final statement should also contain recommendations for an amicable resolution. We furthermore suggest that such recommendations take notice of a relevant example of good company practice consistent with the Guidelines in response to the complaint that was brought before the Australian NCP by the Human Rights Law Centre and landowners from Loloho and Rorovana areas of Bougainville against Rio Tinto.

90. Complainants will be happy to meet with the NCP to clarify their position whenever that may seem helpful. If we believe that it is necessary to respond to any reply Aker may make to this document, we respectfully envisage to do so.

22 March 2024, on behalf of

Civil Society Coalition on Natural Resources
Global Idé
Liech Victims' Voices
Norwegian Church Aid
Norwegian People's Aid
PAX
South Sudan Council of Churches
Swedwatch
Contact persons

Eva Gerritse & Egbert Wesselink
C/O PAX, PO Box 19318, NL-3501DH Utrecht, The Netherlands
gerritse@paxforpeace.nl
wesselink@paxforpeace.nl

Annex 1: Overview of appeals to Lundin by stakeholders and their advocates to comply with the Guidelines

Date	Stakeholder's engagement with Lundin regarding Responsible Business Conduct	Date	Lundin's response
11-11-2008	ECOS shares a draft of the report "*Unpaid Debt*" with Lundin, recommending that it acknowledges its responsibilities, reconcile with victims, and respect the right to compensation, defined as "*A genuine compensation process that is designed to achieve reconciliation and forgiveness through justice."* The report furthermore quotes multiple claims by stakeholders for their right to reparation.	Lundin letter to PAX, 12-11-2008	Lundin claims that publication of the report will cause irreparable damage to the company and its reputation, and puts those involved on notice that it will claim damages for any loss it may suffer. No stakeholders are engaged.
20-05-2010	ECOS shares an updated draft report "Unpaid Debt" with Lundin, that calls for an investigation of the extent to which Lundin has adequately "*addressed the alleged adverse impacts"* in Sudan, and recommends that Lundin creates enabling conditions for reconciliation with victims of the oil war, including the allocation of funds for reparation.	Lundin letter to PAX, 21-05-2010; Lundin letter to PAX, 31-05-2010;	Lundin claims that publication of the report will cause irreparable damage to the company and its reputation, and puts those involved on notice that it will claim damages for any loss it may suffer. Lundin denies any wrongdoing and confirms that it will claim damages for any loss it may suffer as a result of publication. No stakeholders are engaged.
8-06-2010	ECOS publishes the report "*Unpaid Debt*". See www.unpaiddebt.org. The report calls for an investigation of the extent to which the member companies of the Consortium have adequately addressed the alleged adverse impacts of the Consortium's operations, and recommends that Lundin creates enabling conditions for reconciliation with victims of the oil war, with reference to the right to reparation. The report contains multiple claims for remedy by stakeholders.	Ian H. Lundin's open letter to Lundin Petroleum's Shareholders, 8-06-2010	Lundin publicly denies any wrongdoing and claims that it has, at all times, been concerned with the interests and respected the rights of the people of Sudan. The company questions the motives behind the report. No stakeholders are engaged.
09-04-2012	PAX proposes the 10 May 2012 AGM of Lundin to institute a grievance mechanism that conforms the requirements of the UN "*Protect, Respect, and Remedy Framework*", that is capable of handling any grievances that may exist against the company in Sudan. PAX proposes the AGM of Lundin "*to commission an independent and comprehensive investigation into damages and losses incurred by people whose human rights may have been affected by the Company (…)."*	11-04-2012	The Board of Lundin unanimously recommends to vote against the proposal. No justification is provided. The Board of Lundin unanimously recommends to vote against the proposal, arguing that *"Lundin Petroleum should not now be forced to prove its innocence in light of allegations and accusations that have been continually denied for over ten years."* The Board does not refer to the Guidelines, the UNGPs, or to stakeholders. See Shareholder AGM Proposoals and Board Responses 2012 at https://www.lundinsudanlegalcase.com/company-statements/
09-04-2012	Folksam, the largest insurance company of Sweden, proposes the AGM of Lundin that the company initiates and finances an audit to verify that the Company's operations in Sudan are in compliance with the UN "Protect, Respect, and Remedy Framework" and the OECD Guidelines.	11-04-2012	The Board of Lundin unanimously recommends to vote against the proposal, arguing that, *"The terms of reference of the requested investigation are too broad and uncertain. (…) It would be impossible to audit or investigate each and every unfounded and unsupported allegation that has been raised. (…) Such an investigation can never be conclusive,*

			given the complexity of the issues, and the number of unfounded and unsupported allegations made." And, "*it is only through a thorough and impartial judicial process under Swedish and international law that these issues can be resolved."* The Board does not refer to the Guidelines, the UNGPs, or to stakeholders. See Shareholder AGM Proposoals and Board Responses 2012 at https://www.lundinsudanlegalcase.com/company-statements/
03-04-2013	PAX proposal to the 8 May 2013 AGM of Lundin [Full text] *"A shareholder proposes that the Annual General Meeting calls on the Board of Directors to* *1. express support for the June 2011 United Nations Guiding Principles on Business and Human Rights, and the May 2011 OECD Guidelines; and* *2. ensure compliance with these standards by* *a. assessing actual and potential human rights impacts of the company, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed;* *b. identifying when and how the company and its legal predecessors may have caused or contributed to adverse human rights impact in the past, through a process that is independent of the company and that has the confidence of shareholders and relevant stakeholders;* *c. provide for or co-operate through legitimate process in the remediation of these impacts and ensure access to remedy for adversely affected individuals and communities and;* *d. institute a grievance mechanism in conformity with the UN Guiding Principles."*	09-04-2013	The Board of Lundin unanimously recommends to vote against the proposal in its entirety, arguing that the Company has already endorsed the UNGP, and that "*The Shareholder Proposal is broad, vague and uncertain, and focuses on past events, referring to accusations of complicity in international crimes … ."* And "*The Shareholder Proposal has been brought as a part of the misguided campaign by ECOS and Mr. Wesselink against the Company."* The Board believes "*that it would be entirely inappropriate for an independent process to be commenced in respect of these issues, which may even be detrimental to the current judicial process."* The Board reiterates that " … *it is only through a thorough and impartial judicial process under Swedish and international law that these issues can be resolved*." The Board does not refer to the Guidelines, the UNGPs, or to stakeholders. See Shareholder AGM Proposals and Board Responses 2013 at https://www.lundinsudanlegalcase.com/company-statements/
May 2016	Liech Victims Voices, representing the communities that have been affected by the oil war in Lundin's Block 5A, publicly issues a claim for a remedy and reparation process. They directly address the members of the Lundin Consortium, their shareholders, and Sweden. The claim includes their contact details. The claim was made publicly available at https://unpaiddebt.org/remedy-claim/		Lundin does not react or respond to the claim, and does not contact Liech Victims Voices.
09-03-2017	PAX proposes the 4 May 2017 AGM of Lundin to *"1. allocate SEK 5 billion to remedy the company's adverse human rights impacts in Sudan, and* *2. request the Swedish Government to design a related remedy mechanism (…)."* The supporting statement states *"There is overwhelming evidence that Lundin's activities in Sudan have had adverse human rights impacts and the company has never presented any facts or assessments that indicate otherwise.* (…) *Lundin can still start living up to its principles and make up with the people that it left behind in Sudan.*", but that this will require a compelling show of goodwill and demonstration of	04-04-2017	The Board of Lundin unanimously recommends to vote against the proposal stating that it contains *incorrect, unsupported and damaging statements.* See Shareholder AGM Proposals and Board Responses 2017 at https://www.lundinsudanlegalcase.com/company-statements/

	commitment, e.g. the allocation of funds. It further argues that the company confuses the fact that it may have had adverse impacts with war crimes investigation against its Directors, noting that the public prosecutor is not assessing the company's human rights impacts.		
09-02-2022	PAX proposes the 31 March 2022 AGM of Lundin to "*modify the Combination Proposal with Aker BP in order for the Company to retain sufficient means to adequately contribute to remedy and reparation of victims of adverse impacts that the Company may have contributed to.*" The Explanation refers to harm to people and Lundin's commitment to remedy negative impacts.	25-02-2022	The Board of Lundin unanimously recommends to vote against the proposal as the company will "*retain value in excess of any of the contingent liabilities, should any arise.*" and "t*here is no evidence linking any representative or the Company to the alleged primary crimes (…) .*" The Board does not identify the risk that it may be compelled to contribute to remediation, and does not mention victims of alleged human rights violation. The Board does not refer to the Guidelines, the UNGPs, or to stakeholders. See Shareholder AGM Proposals and Board Responses 2022 at https://www.lundinsudanlegalcase.com/company-statements/
09-02-2022	PAX proposes the 31 March 2022 AGM of Lundin *that the company reconciles with the members of communities that suffered badly from the violence that was related to its presence in today's South Sudan.*" In the Explanation, PAX asks the company to show humanity and compassion.	25-02-2022	The Board of Lundin unanimously recommends to vote against the proposal. It denies any wrongdoing by the Company and claims that it has been "*a force for development in Sudan and did everything in its power to advocate for peace by peaceful means (…).*" The Board does not respond to the moral nature of the proposal and or make a reference to stakeholders. See Shareholder AGM Proposals and Board Responses 2022 at https://www.lundinsudanlegalcase.com/company-statements/
14-03-2023	PAX proposes the 31 March 2023 AGM of Orrön "*to make a provision of MSEK 1,394.8 for the Swedish Prosecution Authority's claim against the company.*"		The Board of Lundin unanimously recommends to vote against the proposal as it "*sees no circumstance in which a corporate fine or forfeiture could become payable*". The Board is "*extremely critical of the fact that the Swedish Prosecutor has based his unfair and flawed investigation and unfounded prosecution upon unreliable and not credible allegations in NGO reports including in particular "Unpaid Debt,"*. The Board does not refer to the Guidelines, the UNGPs, or to stakeholders. See Shareholder AGM Proposals and Board Responses 2023 at https://www.orron.com/download/?wpdmdl=42500

Annex 2: Inaccuracies and misrepresentations in Aker's response

91. The Complaints have set out a number of primary concerns in the main body of this paper. There are a number of other matters where we do not agree with Aker, such as where we consider they have misrepresented our position. The following list is non-exhaustive and is intended to assist the NCP in their investigation and consideration of the matter.

Chapter in Aker's *Response*	**Page no.**	**Aker's *Response***	**Rebuttal**
PART I			
2. The conflict between the complainants and Lundin Energy	p. 3	"It would therefore be useful to clarify the issues that form part of the victims' conflict with Lundin Energy and **hence fall outside the scope of the Specific Instance**." [emphasis added]	Misrepresentation. These questions are relevant for Aker's human rights due diligence and therefore fall inside the scope of the Specific Instance (see Preliminary Remarks).
2. The conflict between the complainants and Lundin Energy	p. 2	"Complainants allege … (ii) That Lundin Energy has a **legal liability** to compensate victims of these human rights violations." [emphasis added]	Misrepresentation. It is not alleged that Lundin has a legal liability to compensate. The Complaints state that Lundin failed its responsibility under the Guidelines to assess and address their human rights impacts (*Complaints*, p. 5) and that victims of war crimes hope "*that the facts presented at the trial will oblige the company to* ***comply with the OECD Guidelines*** *and address its unaddressed adverse impacts*." [emphasis added] (*Complaints*, p. 9).
	p.3	Aker quotes an e-mail in which PAX explains why no complaint was brought against Lundin, and states that: "This response completely overlooks the fact that the dialogue and mediation is merely one side of the Specific Instance. PAX's response also seems to be contradicted by their subsequent statement: "[…] we would like to believe that Lundin is sincere when it claims to uphold the Guidelines and the UNGP. While there are reasons to doubt its understanding of their underlying values, we believe that the company deserves the benefit of the doubt."	Misleading quotation. The quoted statement answered the question whether Lundin may share the values underlying the OECD Guidelines, not whether it makes sense to file a complaint against Lundin with the Swedish NCP, as Aker suggests. For the reasons why complainants did not bring a complaint against Lundin in Sweden, see the e-mail from PAX to the Norwegian NCP of 1 November 2022.
		"NCPs are increasingly recognised as a go-to, non-judicial forum based on 'soft law' principles…but they can also have very hard consequences for companies that don't want to	Selective quotation that misses the gist of the article from which it has been taken, that the NCP system is yet to deliver on its promise. (See: "*Renewing the Lex Mercatoria*" by Julia Green for IBA in 2016). E.g. the article also quotes Ame Trandem from OECD Watch:

		participate." (John Sherman, quoted in https://www.ibanet.org/article/81d4c3ec-11bc-4c69-9efe-783f265e4433)	*'OECD Watch has found that less than one percent of 250 cases filed by communities, individuals and NGOs over the past 15 years have resulted in directly improved conditions for the victims of corporate abuse*,' and Tim Cooke-Hurle, a barrister at Doughty Street Chambers, *"The prospect of a bad decision, bad remedy or no remedy from a time-consuming process is quite high*."
3. Complainants' submissions on the adverse impact on their right to remedy	p. 3	"The Complaint against Aker BP (in the Introduction) described the alleged adverse impact as follows: The Complainants assert that Aker BP's acquisition foreseeably compels Lundin Energy to fail its responsibility under the OECD Guidelines as it leaves the company with insufficient means to address severe ongoing (unremediated) impact. Two implications should be noted; firstly, that it refers to a potential adverse impact, not an actual one. Secondly, it concerns Lundin Energy (Orrön Energy)'s financial **ability** to compensate victims but not the company's **willingness** to do so."	Wrong inference. Aker ignores the consequences of the merger. See the November 2023 *Submission*, p. 13, "*When the merger came into effect on July 1st, 2022, the identified potential adverse impact – undue delay of, and ongoing denial of a remedy, and its perpetuation – became an actual impact*." Red herring. Aker's remark that the alleged adverse impacts concerns Lundin's ability, not its willingness to address impacts, is irrelevant for the Complaints. In any event, as explained in these Notes (see *'Aker weighed Lundin's position over understanding other important facts and so failed to assess the risk appropriately*') and in Annex , Lundin has consistently been unwilling to engage in appropriate due diligence, stakeholder engagement or remedy.
	p.3	"It could only become an actual adverse impact **if and when** Lundin Energy should be compelled to provide remedy but at that time lacks the means to do so." [emphasis added]	Wrongful premise. Ongoing denial of the right to remedy is an actual adverse impact, and the responsibility to provide remedy is triggered by the act of causing or contributing to adverse impacts, not by compulsion. The underlying assumption that potential impacts only become actual impacts after a court decision is at odds with the Guidelines.
4. Allegations of contribution by Aker	p.5	"The implication is that Aker BP, allegedly has a responsibility under the Guidelines to provide remedy to the victims now. The complainants assert that Aker BP's human rights due diligence should have identified that it would be contributing, and consequently should have addressed its alleged responsibility for remediation. **Their suggestion is an obligation for Aker BP to remedy a lack of remedy from Lundin Energy**." [emphasis added]	Overstatement. Aker was informed of the risks of potential adverse impacts of the merger on 21 December 2021, immediately after it publicly announced its intention to undertake the merger. The formal Complaints were filed before the merger came into effect, at a time when Aker still could (and should) have identified the potential risks of the merger and taken measures to address and to prevent the foreseeable adverse impact. The Complaints warned that Aker would otherwise assume a responsibility to remediate the actual adverse impact of the merger that barred access to effective remedy. The Complainants request that Aker undoes the consequence of its own act, not Lundin's. In so far as these are connected, this is caused by Aker's actions. In other words, Aker's due diligence should have identified a risk and taken mitigating measures. Failure to do so triggered the responsibility to address the consequences of

			this failure. In our *Submission*, we clarify that this failure, and by facilitating and incentivizing Lundin, perpetuated an actual and ongoing adverse impact. This constitutes a contribution to this impact, and therefore Aker ASA and Aker BP ASA are *"expected to ensure that victims of adverse impacts in South Sudan access their right to effective remedy and reparation*".
5. The right to remedy	p.6	"Swedish law provides for effective enforcement mechanisms once a claim is established."	Misrepresentation. We note that we are in agreement with Aker that there may be civil remedies, for which funds should be available. However, there are effectively no options for victims to access remedy through the Swedish legal system because: - Each victim will have to bring an individual claim in a separate proceeding and a class action suit cannot be brought in Sweden. - The Stockholm District Court has ruled that non-resident civil claimants must deposit a collateral of €45.000 each to bring a case, which few if any victims can. The prosecutor in the Lundin case publicly stated that this effectively denies victims of war crimes the right to reparation. Obviously, the absence of access to full and effective remedy makes it all the more important for Aker to ensure that there are (i) adequate funds and (ii) its HRDD is responsive to the need for full remedy.
PART II			
8.1 The target and the roles of various companies involved in the transaction	p.8	"the Submissions depict the transaction as a "merger between Aker BP and Lundin Energy AB". This is not correct."	Aker BP's press release of 21 December 2021 itself describes the transaction as "*The merger of Aker BP and Lundin Energy* …".
8.2 The transaction structure	p.9	"The commercial and legal substance of the transaction is much simpler than what the complainants portray them to be. Lundin Energy wanted to divest its Norwegian E&P business but had no intention of divesting the remaining business."	Wilful blindness. Lundin's shareholders could not divest completely because Lundin was party in a war crimes trial and could therefore not cease to exist as a legal entity. In addition, the corporate fine and forfeiture claims of the Swedish public prosecutor obliged the company to retain app. MEUR 120 in retrievable assets.
	p. 10	"…, we do not see the significance of Lundin Energy's reasons for divesting the E&P business nor any reason to speculate on the motive, …"	Wilful blindness. The fresh indictment was unquestionably a factor in the business relationship between Aker, Lundin, and the suspected war criminal with whom Aker negotiated the transaction. The indictment was for his role in Lundin, his family's business and he had a decisive influence over the completion of the merger. The merger clearly served the interests of Lundin's principal shareholder, the family of the suspect. Both suspects served as Chair and Director of Lundin until weeks before the merger became

			effective. Together, this provides compelling reasons to examine the motives behind the offer of a merger with Lundin.
8.3 The sales process	p.10	"Thirdly, it was well known that the Lundin group was an active M&A player with the ability to seize market opportunities. A few years earlier Lundin Energy divested its international E&P business to International Petroleum Corporation (retaining all liabilities and responsibilities related to the Sudan operations). In 2019/2020 Lundin entered a transaction with Equinor to buy back shares against cash and divesting interests in Norwegian oil fields (Equinor had held a 20.1% shareholding in Lundin Energy). There had in fact been discussions with Aker BP about a transaction since 2014. **The transaction in 2021 is therefore not inconsistent with the corporate and transactional history of Lundin Energy**" [emphasis added]	Wilful blindness. Aker argues that the sale of the non-Norwegian assets to the IPC shows that Lundin was an active M&A player. However, the International Petroleum Corporations (IPC) was incorporated on January 13, 2017 by Lundin for the purpose of acquiring Lundin's oil and gas assets in Malaysia, France and the Netherlands. The creation of IPC was neither a merger nor an acquisition, but a restructuring that transferred 7% of Lundin's assets to a newly established entity. Its main motive was that the prevalence of Lundin's assets in Norway did not leave sufficient management time and attention for other assets. The Lundin family kept its controlling interest of 33% and IPC remained part of the Lundin Group. Lundin's merger with Aker BP bears no resemblance to the creation of IPC (98% of the value was moved to Aker). The same is true of the transactions with Equinor. In March 2016, Equinor purchased an 11.9 per cent stake in Lundin, later raised to 20,1 per cent. It sold these shares again in July 2019 and May 2020, "*concluding what has been a successful investment for Equinor*", according to Lars Christian Bacher, CFO of Equinor.[1] Lundin and Equinor's engagement again bears no resemblance to the merger with Aker BP. Immediately after the efforts to prevent an indictment had failed, Lundin decided to dispose of its E&P business, shrink by 98%, and change its name, de facto erasing itself to the extent possible. That was a radical breach with the company's corporate and transactional history. [1] https://www.equinor.com/news/archive/2020-05-05-lundin.
8.5 The negotiations	p.11	"The indictment concerned Lundin Energy and its former executives, not the target company Lundin Energy Norway AS or any of its representatives."	Artificial presentation. The indictment concerned the corporation that, apart from holdings in a few tiny companies, essentially consisted of Lundin Energy Norway (98%). To state that Lundin Energy Norway did not share its parent's human rights responsibilities, is to replace the responsibility approach of the Guidelines with the artificial realities of company law. We assert that the merger artificially separated Lundin Energy AB's defining assets from its responsibilities and liabilities. The indictment concerns Lundin Energy AB for its connection with its former subsidiary Sudan Ltd. This implies a joint liability between a subsidiary and its parent.

			See also p. 27 https://www.orron.com/wp-content/uploads/2022/05/ot_renewables_IM_e.pdf referencing charges against the company.
	p.12	"The suggestion that Orrön Energy was "shaped by Aker" or that Aker was otherwise involved in Lundin Energy's decisions regarding the business that was to be continued after the divestment, simply does not make sense. The transaction structure and the step plan to complete the transaction was developed by Lundin Energy and presented to Aker BP."	Misrepresentation. The restructuring of Lundin was essential to the merger agreement that Aker BP voluntarily signed with Lundin on 21 December 2021. It was also included in the Merger Plan that Aker BP ASA signed on 14 February 2022, and described in detail in the Exemption Document that Aker BP ASA published on 9 March 2022. Whether the initiative for the way that Lundin was restructured came from Aker or Lundin itself is irrelevant to the Complaints. Aker endorsed, enabled, facilitated and benefitted from Lundin's restructuring. It was the basis for their deal.
9.1 Lundin Energy's distribution of dividend	p.12 (and again on p. 20)	"While it is correct that there was a significant reduction in the net asset value of Lundin Energy following the transaction, this is not a result of Aker BP's acquisition but of Lundin Energy's distribution of dividend as a lex Asea dividend pursuant to Swedish law. The recipients of the dividends transferred out of Lundin Energy were the company's shareholders. Aker BP has not received any dividends and paid consideration for the assets that have been acquired. The transaction saw no change in the value of Aker BP (other than an increase in share price following the announcement). **The timing and the size of the dividend distribution was a decision made solely by Lundin Energy."** [emphasis added]	Misrepresentation. The distribution of the dividend to the Lundin family and other shareholders of Lundin was a component of the merger plan that Aker agreed to, as described in detail in the Exemption Document of March 2022. The merger agreement, that included the dividend payment, had also to be agreed by the shareholders of Aker BP. Aker knew this at all relevant times. See further above, par.35.
10.1 The nature of remedy	p.14	"Another premise which is central to the argument about Orrön Energy's foreseeable financial incapacity is that remedy would require a one-off payment of a very substantial size."	Straw man. Complainants do not propose a '*one-time payment of remedy of a billion-dollar figure*'. No specific remediation requirements are proposed or suggested by the Complainants. We merely present a damage estimate as an indication of the costs of effective remedy.
10.2 PAX's estimate of the costs of remedy	p.15	"We first note that PAX seeks to hold the oil companies solely responsible for human rights violations perpetuated by the Sudanese army and militia groups during an ongoing civil war – which is an improbable starting point for an obligation to remedy."	Misrepresentation. Nowhere does PAX hold oil companies solely responsible for human rights violations. However, as there is no other party that the rightsholders can turn to than oil companies, it is from them that they are seeking remedy and reparation. The question of joint and several responsibility will only become relevant after a party assumes responsibility for adverse impacts. Aker could have but made no attempt to assess this aspect independently. It did not obtain Sudanese legal advice. It did not seek any

			clarification through stakeholder engagement. It discounts that risk without understanding it.
	p.15	"It is difficult to see how a calculation of interest would be a relevant factor in the context of remedy under the Guidelines to address impacts of 20 years ago."	False claim. Allowing for interest (in order to adjust for inflation) is part and parcel of reparation claims in courts and in corporate remediation practices worldwide. Cursory due diligence by reference to human rights practitioners and/or by asking the complainants as stakeholder why they had adjusted for inflation would have shown this.
11.1 The mischaracterization of Orrön Energy	p.17	"The assets and cash amount retained after the divestment of the E&P business was not tailored to be set aside to meet a potential future forfeiture claim."	Dubious claim. A prosecutor who has a request pending in court to impose a fine or forfeiture will routinely assess the risk that these will become withheld. If a prosecutor finds that the accused party may be depleting its ability to pay its dues, he will request the court to freeze its assets. The forfeiture claim was MSEK 1,391 and the merger endowed Lundin with MSEK 1,324 in cash, roughly the amount required to prevent that there would be sufficient grounds for a freezing injunction. We are not convinced that it was a downright coincidence that Lundin was endowed with just enough cash to avert a freezing injunction and just enough assets to carry the costs of the trial.
	p. 18	"Towards the end of the Submissions the complainants seem to accept the fact that Orrön Energy is not a single-purpose vehicle but an operative company with substantial activities, when they say: "there are too many unknowns to predict whether Orrön Energy will prosper or go bust because of these risks and liabilities". [28 Submissions, para 11.]"	Red herring. Nowhere do the Complainants suggest that Orrön is a single purpose vehicle. In fact, we argue that the tailoring of Orrön to serve its goal required that it would own an actual business.
12.2 The relevance of the expert opinions	p.20	"Her expert opinion addresses the expectations of human rights due diligence in connection with mergers and acquisition, which are described as the process to identify and address salient human rights impacts caused or contributed to by the company being acquired (the target company)"	Aker misinterpreted Prof. Ramasastry's expert opinion on what the target of HRDD should be during a merger/acquisition. See Prof. Ramasastry's *Response to Response and Submissions*, par.6-18 and 27-29.
	p.21	"The target company had no links to the alleged human rights violations in Sudan and therefore no unresolved human rights issues."	Lundin Energy Norway AS has been directly linked to alleged human rights violations in Sudan since 2003. (See below)
PART III			
13 Initial observations on the application of the Guidelines	p.22	"We also agree with Professor Ramasastry that a human rights due diligence in connection with mergers and acquisitions means addressing any human rights impacts connected to the company being acquired (the target)."	Aker misinterprets Prof. Ramasastry's expert opinion on what the target of HRDD should be during a merger/acquisition. See Prof. Ramasastry's *Response to Response and Submissions*, par.6-18 and 27-29.

	p.23	"The business relationship between the seller and buyer in a merger or acquisitions situation is short-lived. The business relationship exists in the negotiation phase and ends upon the completion of the transaction."	Misleading. It is questionable to consider the relationship has ended for the purposes of the Guidelines. The business relationship between Aker and the Lundin family (its second largest shareholder), the other shareholders of Lundin, and Lundin Group is long-lived. A trusted representative of the Lundin family and the Lundin Group, Lundin's former CEO Ashley Heppenstal, is serving as Director of Aker BP. The continuation of a relationship is confirmed by Aker BP's CEO Karl Johnny Hersvik in the company's press statement of 21 December 2021: *"We know the Lundin organisation well and we are convinced that* **we will make an even better Aker BP together***."* [Emphasis added] In any event: the risk was that Aker would contribute to the adverse impact by implementing the proposed merger without safeguards. That risk occurred. There is no sound basis for them to argue that there was not a risk of them contributing to an adverse impact.
	P.24	"(vii) The focal point for a human rights due diligence in relation to mergers and acquisitions is on the company/companies being acquired (target) and their potential human rights impacts (as confirmed by Professor Ramasastry's expert opinion)."	Misinterpretation. Aker misinterpreted Prof. Ramasastry's expert opinion on what the target of HRDD should be during a merger/acquisition. See Prof. Ramasastry's *Response to Response and Submissions*, par.6-18 and 27-29.
	P.24	"(viii) The six-steps process was introduced by the Guidance as a tool to assist companies in setting up systems for their human rights due diligence processes and is also largely shaped on the typical long-term business relationships. It is explicitly stated in introduction to the six-step process the Guidance that not all steps will be relevant in all situations: "The practical actions provided are not meant to represent an exhaustive "tick box" list for due diligence. Not every practical action will be appropriate for every situation. Likewise, additional practical actions or implementation measures not described in this Guidance may be useful in some situations.42 [42 OECD Due Diligence Guidance, page 21.]""	Misrepresentation. The quoted statement refers to the practical actions listed per step, not the steps themselves. Nowhere does the Guidance suggest that any of the 6 steps can be left out. Please note that we have identified to the NCP that the assessment of contribution is an integral part of almost all aspects of the HRDD process. See preliminary remarks, par.11. Integral to much of that analysis was stakeholder engagement, by which Aker would have understood the situation and not dismissed the risk, and by which Aker would have understood the nature of the remedy sought. See preliminary remarks, par. 11.
13.5 The target company's possible connection to the human rights impacts	p.27	"(ii) Neither Lundin Energy Norway nor other target companies had, as a matter of fact, had any involvement with or connection to Lundin Energy's operations in Sudan or their alleged adverse impacts."	Misrepresentation. Lundin Energy Norway was connected to the Sudan operations through the DNO acquisition in 2003, for which purpose it was incorporated, and Lundin Energy Holding BV, that was absorbed by Aker BP, was connected to all liabilities and responsibilities of Lundin Energy AB because it was the sole

			owner of its assets and pivotal to its functioning. In any event, it is both Lundin and Aker's position that Lundin held the liabilities arising from the former Sudan operations. 98% of that company moved to Aker by the merger agreement. It was artificial to focus on the target companies. See par.35 above and see Prof. Ramasastry's *Response to Response and Submissions*, par.6-18 and 27-29.
	P.27	"(iv) Over the years that NGO's had publicly accused Lundin Energy of contribution to adverse human rights impacts with a responsibility to compensate victims, no claims or allegations had ever been directed at Lundin Energy Norway AS (or other target companies). Similarly, no allegation had ever been made that Lundin Energy Norway AS carried any liability or responsibility to compensate victims."	Factual error. Allegations that Lundin Energy Norway AS carried responsibility for adverse impacts in Sudan received ample public attention in Norway. In October 2011, MP Snorre Valen proposed the Storting to exclude Lundin Energy Norway AS from participating in Norwegian licensing rounds because of its links with alleged war crimes in Sudan. He also proposed that the Government Pension Fund excludes Lundin Energy AB from its portfolio. The Astrup Fearnley Museum became the centre of a public row over sponsorship of Lundin Energy Norway AS in 2012. A selection of Norwegian mainstream mass media during 2011, 2012 and 2013: ✓ Stavanger Aftenbladet, *Lundin beskyldes for krigsforbrytelsen I Sudan*, 6 October 2011. ✓ NRK, *Omstridt oljeselskap blir Astrup Fearnleys hovedsponsor*, 15 October 2012. ✓ Dagbladet, *Nei til sjampanje på Tjuvholmen*, 21 October 2012. ✓ Dagsavisen, *Blodspenger pa Norsk sokkel (Blood money on the Norwegian continental shelf)*, 11 January 2013. ✓ Stavanger Aftenblad, *Lundin Omstridt oljeutvinning*, 23 February 2013. ✓ Dagens Næringsliv, *Fra Sudan til Norsk sokkel,* 26 March 2013. Elementary due diligence would have found such materials in the public domain. Elementary stakeholder engagement would have enabled Aker to understand from the Complainants the full background to this issue.